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No. 39] NEW DELHI, SEPTEMBER 19—SEPTEMBER 25, 2004, SATURDAY/BHADRA 28—ASVINA 3, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 15 सितम्बर, 2004

का. आ. 2357.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री राकेश प्रसाद, अभियोजन अधिकारी, केन्द्रीय अन्वेषण ब्यूरो को दिल्ली विशेष पुलिस स्थापना द्वारा विचारण न्यायालयों में संस्थित मामलों और किसी राज्य अथवा संघ राज्य क्षेत्र जिस पर पूर्वोक्त धारा के उपबंध लागू होते हैं, में विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों में इन मामलों से उद्भूत अपीलों/पुनरीक्षणों अथवा अन्य विषयों के संचालन के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/1/2004-ए.वी.डी.-II (i)]

बी. राजगोपाल नायडू, निदेशक

MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 15th September, 2004

S.O. 2357.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Rakesh Prasad, Prosecuting Officer of the Central Bureau of Investigation as Special Public Prosecutor for conduct of cases instituted by the Delhi Special Police Establishment in trials courts and appeals, revisions or other matters arising out of these cases in revisional or appellate Courts, established by law in any State or Union Territory to which the provisions of the aforesaid section apply.

[No. 225/1/2004-AVD-II(i)]

B. RAJAGOPAL NAIDU, Director

नई दिल्ली, 15 सितम्बर, 2004

का. आ. 2358.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री शशि कान्त वर्मा, अभियोजन अधिकारी, केन्द्रीय अन्वेषण ब्यूरो को दिल्ली विशेष पुलिस स्थापना द्वारा अन्वेषित मामलों से उद्भूत अभियोजनों, अपीलों, पुनरीक्षणों और अन्य विषयों का किसी भी राज्य अथवा संघ राज्य क्षेत्र में विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों में जहां उक्त धारा के प्रावधान लागू होते हैं, संचालन करने के लिए विशेष लोक अभियोजन के रूप में नियुक्त करती है।

[सं. 225/1/2004-ए.वी.डी.-II(ii)]

बी. राजगोपाल नायडू, निदेशक

New Delhi, the 15th September, 2004

S.O. 2358.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Shashi Kant Varma, Prosecuting Officer of the Central Bureau of Investigation as Special Public Prosecutor for conduct of cases instituted by the Delhi Special Police Establishment in trials courts and appeals, revisions or other matters arising out of these cases in revisional or appellate Courts, established by law in any State or Union Territory to which the provisions of the aforesaid section apply.

[No. 225/1/2004-AVD-II(ii)]

B. RAJAGOPAL NAIDU, Director

नई दिल्ली, 15 सितम्बर, 2004

का. आ. 2359.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री के. सुदर्शन, अभियोजन अधिकारी, केन्द्रीय अन्वेषण ब्यूरो को दिल्ली विशेष पुलिस स्थापना द्वारा अन्वेषित मामलों से उद्भूत अभियोजनों, अपीलों, पुनरीक्षणों और अन्य विषयों का किसी भी राज्य अथवा संघ राज्य क्षेत्र में विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों में जहां उक्त धारा के प्रावधान लागू होते हैं, संचालन करने के लिए विशेष लोक अभियोजन के रूप में नियुक्त करती है।

[सं. 225/1/2004-ए.वी.डी.-II(iii)]

बी. राजगोपाल नायडू, निदेशक

New Delhi, the 15th September, 2004

S.O. 2359.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri K. Sundarshan, Prosecuting Officer of the Central Bureau of Investigation as Special Public Prosecutor for conduct of cases instituted by the Delhi Special Police Establishment in trials courts and appeals, revisions or other matters arising out of these cases in revisional or appellate Courts, established by law

in any State or Union Territory to which the provisions of the aforesaid section apply.

[No. 225/1/2004-AVD-II(iii)]

B. RAJAGOPAL NAIDU, Director

नई दिल्ली, 15 सितम्बर, 2004

का. आ. 2360.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 25 की उपधारा (1 ए) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री सुरेश कुमार बत्रा को दिल्ली विशेष पुलिस स्थापना द्वारा भारत के किसी राज्य अथवा संघ राज्य क्षेत्र जिस पर पूर्वोक्त धारा के उपबंध लागू होते हैं, में मजिस्ट्रेट न्यायालयों में संस्थित किसी मामले अथवा मामलों का संचालन करने के लिए सहायक लोक अभियोजक, केन्द्रीय अन्वेषण ब्यूरो के रूप में नियुक्त करती है।

[सं. 225/1/2004-ए.वी.डी.-II(iv)]

बी. राजगोपाल नायडू, निदेशक

New Delhi, the 15th September, 2004

S.O. 2360.—In exercise of the powers conferred by Sub-section (1A) of Section 25 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Suresh Kumar Batra, as Assistant Public Prosecutor, Central Bureau of Investigation for the purpose of conducting any case or class of cases in the courts of Magistrates instituted by Delhi Special Police Establishment before the courts of Magistrates in any State or Union Territory of India to which the provisions of the aforesaid section apply.

[No. 225/1/2004-AVD-II(iv)]

B. RAJAGOPAL NAIDU, Director

नई दिल्ली, 15 सितम्बर, 2004

कां. आ. 2361.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री एन. सुंदरावेदीवेलु, अधिवक्ता को विचारण न्यायालयों में निदेशक, केन्द्रीय अन्वेषण ब्यूरो द्वारा उन्हें सौंपे गए दिल्ली विशेष पुलिस स्थापना (के.अ.ब्यूरो) द्वारा तमिलनाडु राज्य में कोयम्बटूर में संस्थित मामलों के अभियोजन तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों में इन मामलों से उद्भूत अपीलों/पुनरीक्षणों अथवा अन्य विषय का संचालन करने के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/23/2003-ए.वी.डी.-II]

बी. राजगोपाल नायडू, निदेशक

New Delhi, the 15th September, 2004

S.O. 2361.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri N. Sundaravadiavelu, Advocate as Special Public Prosecutor for conducting the prosecution of cases instituted by the Delhi Special Police Establishment (CBI) in the State of Tamil Nadu at Coimbatore as entrusted to him by the Director, Central

Bureau of Investigation, in the trial courts and appeals/revisions or other matter arising out of these cases in revisional or appellate Courts, established by law.

[No. 225/23/2003-AVD-II]

B. RAJAGOPAL NAIDU, Director

नई दिल्ली, 17 सितम्बर, 2004

का. आ. 2362.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 119 पीसीआर 2004 दिनांक 17-8-2004 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से (1) श्री आनंद राव, उप महाप्रबंधक, सिंडिकेट बैंक, चेन्नई और (2) श्री एम. बालाकृष्णन, प्रोपराइटर, मैसर्स बाला इंटरनेशनल, करूर, तमिलनाडु एवं किन्हीं अन्य लोक सेवकों अथवा व्यक्तियों के विरुद्ध वर्ष 2000-2001 के दौरान मैसर्स बाला इंटरनेशनल, करूर, तमिलनाडु को साख-सुविधाएं प्रदान करने के मामले में सिंडिकेट बैंक को 556 लाख रुपये का धोखा देने के कारण भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी संपठित धारा 406, 409 और 420 तथा भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13 (2) संपठित धारा 13 (1) (डी) के अधीन दंडनीय अपराधों और तत्संबंधी सारभूत अपराधों तथा उक्त अपराधों से संबंधित अथवा संसक्त और उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किन्हीं अन्य अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/67/2004-ए.वी.डी.-II]

बी. राजगोपाल नायडू, निदेशक

New Delhi, the 17th September, 2004

S.O. 2362.—In exercise of the powers conferred by Sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Karnataka, vide Notification No. HD 119 PCR 2004 dated 17th August, 2004, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of offences punishable under Section 120-B read with 406, 409 and 420 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 (Act No. 49 of 1988) and substantive offences thereof, against (1) Shri Ananda Rao, Deputy General Manager, Syndicate Bank, Chennai and (2) Shri M. Balakrishnan, Proprietor, M/s Bala International, Karur, Tamil Nadu for defrauding Syndicate Bank to the tune of Rs. 556 lakhs in the matter of grant of credit facilities to M/s Bala International, Karur, Tamil Nadu during the year 2000-2001 and any other public servants or persons in relation to, or in connection with the said offences, and

any other offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/67/2004-AVD-II]

B. RAJAGOPAL NAIDU, Director

नई दिल्ली, 17 सितम्बर, 2004

का. आ. 2363.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 133 पीसीआर 2004 दिनांक 17-8-2004 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से श्री सी. रघुनाथन, उप-प्रबंधक (शॉप), फाउंड्री एंड फोर्ज डिविजन, हिंदुस्तान एरोनॉटिक लिमिटेड, बंगलौर एवं किन्हीं अन्य लोक सेवकों अथवा व्यक्तियों के विरुद्ध भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13(2) संपठित धारा 13 (1) (ई) के दंडनीय अपराधों और उक्त अपराधों से संबंधित अथवा संसक्त उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किन्हीं अन्य अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/73/2004-ए.वी.डी.-II]

बी. राजगोपाल नायडू, निदेशक

New Delhi, the 17th September, 2004

S.O. 2363.—In exercise of the powers conferred by Sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Karnataka, vide Notification No. HD 133 PCR 2004 dated 17th August, 2004, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of offences punishable under Section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988 (Act No. 49 of 1988) against Shri C. Raghunathan, Deputy Manager (Shops), Foundry and Forge Division, Hindustan Aeronautics Limited, Bangalore and any other public servants or persons in relation to, or in connection with the said offences, and any other offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/73/2004-AVD-II]

B. RAJAGOPAL NAIDU, Director

नई दिल्ली, 17 सितम्बर, 2004

का. आ. 2364.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 134 पीसीआर 2004 दिनांक 18-8-2004 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से (1) श्री एन.एन. मूर्ति, पूर्व शाखा प्रबंधक, स्टेट बैंक ऑफ मैसूर, बासवराज मार्केट ब्रांच, बंगलौर (2) श्री गोपीकृष्णन

लाठ, भागीदार, मैसर्स के० के० इण्डस्ट्रीज, बंगलौर (3) श्री कुमार पाल, भागीदार, मैसर्स के० के० इण्डस्ट्रीज, बंगलौर (4) श्रीमती उर्मिला देवी लाठ, भागीदार, मैसर्स के० के० एक्सपोर्ट्स, बंगलौर (5) श्रीमती प्रवीणा, भागीदार, मैसर्स के० के० एक्सपोर्ट्स, बंगलौर तथा अन्य अज्ञात व्यक्तियों एवं किन्हीं अन्य लोक सेवकों अथवा व्यक्तियों के विरुद्ध उनके कपटपूर्ण कार्यों के लिए भारतीय भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी सपठित धारा 409 और 420 तथा भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13 (2) सपठित धारा 13 (1) (डी) के दंडनीय अपराधों और उक्त अपराधों से संबंधित अथवा संसक्त उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किन्हीं अन्य अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/72/2004-ए.वी.डी.-II]

बी. राजगोपाल नायडू, निदेशक

New Delhi, the 17th September, 2004

S.O. 2364.—In exercise of the powers conferred by Sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act. No. 25 of 1946), the Central Government with the consent of State Government of Karnataka vide Notification No. HD 134 PCR 2004 dated 18th August, 2004, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the state of Karnataka for investigation of offences punishable under section 120-B read with 409 and 420 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and Section 13(2) read with 13(4) (d) of Prevention of Corruption Act, 1988 (Act. No. 49 of 1988) against (1) Shri N. N. Murthy, formerly Branch Manager, State bank of Mysore, Basavaraja Market Branch, Bangalore (2) Shri Gopi Krishna Lath, Partner M/s. K. K. Industries, Bangalore (3) Shri Kumar Pal, Partner, M/s. K. K. Industries, Bangalore (4) Smt. Urmila Devi Lath, Partner, M/s K. K. Exports, Bangalore (5) Smt. Praveena, Partner, M/s. K. K. Exports, Bangalore and other unknown persons, for their fraudulent acts, and any other public servants or persons in relation to, or in connection with the said offences, and any other offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/72/2004-AVD-II]

B. RAJAGOPAL NAIDU, Director

नई दिल्ली, 17 सितम्बर, 2004

का. आ. 2365.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 144 पीसीआर 2004 दिनांक 18-8-2004 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से (1) श्री पी.एन. उपाध्याय, तत्कालीन वरिष्ठ शाखा प्रबंधक, बैंक ऑफ बड़ौदा, पानमबूर शाखा, मंगलौर (2) श्री यू. पी. वेंकटेश, मैसर्स एस.बी. कंस्ट्रक्शन्स, केलारकलबेट्टा, विष्णुमूर्ति नगर,

वाया-शांतेकाट्टे, उडुपी (3) श्री बी.आर.आचार्य, लोहित निवास, लोहित नगर, एम.वी. शेट्टी हॉस्टल के पीछे, डेरेबेल चर्च रोड कुंतीखाना, मंगलौर-6 (4) श्री शिव प्रसाद, मैसर्स एन.एस. एसोसिएट्स, प्रथम तल, बेसंत कॉम्प्लेक्स, कोडाई बेल, मंगलौर (5) श्री के. मोहम्मद हनीफ, बेंगलो हाउस, परमुडे विलेज, वाया-बाजपे, मंगलौर तालुक (6) श्रीमती सीता पुजारी (7) श्री करुणाकर पुजारी, भागीदार मैसर्स दुर्गा वुड इंडस्ट्रीज, नं.10 ठोकुर, वाया-हलेनगडी, मंगलौर और (8) श्री गुरुराज पुजारी, प्रोपराइटर, मैसर्स मुकंबिका अर्थ मूवर्स लिमिटेड, श्रीराम निवास, बोल्लूर, कोइकोडे जिला, मंगलौर तालुक एवं किन्हीं अन्य लोक सेवकों अथवा व्यक्तियों के विरुद्ध उनके कपटपूर्ण कार्यों के लिए भारतीय भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी सपठित धारा 420 तथा भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13 (2) सपठित धारा 13 (1) (डी) के दंडनीय अपराधों और उक्त अपराधों से संबंधित अथवा संसक्त उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किन्हीं अन्य अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/71/2004-ए.वी.डी.-II]

बी. राजगोपाल नायडू, निदेशक

New Delhi, the 17th September, 2004

S.O. 2365.—In exercise of the powers conferred by Sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act. No. 25 of 1946), the Central Government with the consent of State Government of Karnataka vide Notification No. HD 144 PCR 2004 dated 18th August, 2004, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the state of Karnataka for investigation of offences punishable under section 120-B read with 420 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and Section 13(2) read with 13(1) (d) of Prevention of Corruption Act, 1988 (Act. No. 49 of 1988) against (1) Shri P.N. Upadhyaya, the then Senior Branch Manager, Bank of Baroda, Panambur Branch, Mangalore (2) Shri U.P. Venkatesh, M/s. S.B. Constructions, Kelarkalbetta, Vishnumurthy Nagar, Via-Santhekatte, Udupi (3) Shri B.R. Acharya, Lohit Niwas, Lohit Nagar, Behind M.V. Shetty Hostel, Derebail Church Road, Kuntikhana Mangalore-6 (4) Shri Shiva Prasad, M/s N.S. Associates, 1st Floor, Besant Complex, Kodailbail, Managalore (5) Shri K. Mohd, Hanif, Bunglow House, Permude Village, Via-Bajpe, Managalore Taluk (6) Smt. Seeta Poojary (7) Shri Karunakar Poojary, Partners, M/s Durga Wood Industries, No.10, Thokur, Via Haleangadi, Mangalore and (8) Shri Gururaj Poojari, Proprietor, M/s Mookambika Earth Movers Limited, Sriram Niwas, Bollur, Koikode District, Mangalore Taluk for their fraudulent acts, and any other public servants or persons in relation to, or in connection with the said offences, and any other offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/71/2004-AVD-II]

B. RAJAGOPAL NAIDU, Director

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 8 सितम्बर, 2004

का. आ. 2366.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ड के साथ पठित आयकर अधिनियम, 1961 की धारा 10 (23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2002-03 से नीचे पैरा (3) में उल्लिखित उद्यम/उपक्रम के अनुमोदन को नवीकृत करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/उपक्रम आयकर नियमावली, 1962 के नियम 2ड के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा;

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/उपक्रम :—

(क) आयकर नियमावली, 1962 के नियम 2ड के स्पष्टीकरण (ख) में यथा परिभाषित पात्र कारोबार को जारी रखना बंद कर देता है; अथवा

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ड के उप नियम (6) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है; अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ड के उप नियम (6) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/उपक्रम है :—

मैसर्स सतलुज जल विद्युत निगम लि. (पूर्व मैसर्स नाथपा झाकरी पावर कॉर्पोरेशन लि.) रजिस्टर्ड एवं कॉर्पोरेट ऑफिस हीमफेड बिल्डिंग, न्यू शिमला-171009 को हिमाचल प्रदेश में सतलुज नदी पर उनकी 6 × 250 मेगावाट नाथपा झाकरी हाईड्रोइलेक्ट्रिक पावर परियोजना के लिए। (फा. सं. 205/2/2000-आयकर नि. II, (खंड-I)।

[अधिसूचना सं. 238/2004/फा. सं. 205/2/2000-

आयकर नि.-II (खंड-I)]

निधि सिंह, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 8th September, 2004

S.O. 2366.—It is notified for general information that the approval to the enterprise/undertaking, listed at

para (3) below has been renewed by the Central Government for the purpose of Section 10(23G) of the Income-Tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962 with effect from the Assessment Year 2002-03.

2. The approval is subject to the conditions that :—

(i) the enterprise/undertaking will confirm to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;

(ii) the Central Government shall withdraw this approval if the enterprise/undertaking :—

(a) ceases to carry on the eligible business as defined in Explanation (b) to Rule 2E of I.T. Rules, 1962; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (6) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (6) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/undertaking approved is :—

M/s. Sathuj Jal Vidyut Nigam Ltd., Formerly M/s. Nathpa Jhakri Power Corporation Ltd., Regd. & Corporate Office Himfed Building, New Shimla-171009 for their 6 x 250 MW Nathpa Jhakri Hydroelectric Power Project on River Satluj in Himachal Pradesh (F. No. 205/2/2000/ITA II)(Vol. I).

[Notification No. 238/2004/F. No. 205/2/2000/ITA-II(Vol. I)]

NIDHI SINGH, Under Secy.

नई दिल्ली, 10 सितम्बर, 2004

(आयकर)

का. आ. 2367.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23-ग) के उपखंड (V) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा “द डिवीजन लाइफ सोसाइटी, जिला टिहरी गढ़वाल, उत्तरांचल” को वर्ष 2005-2006 से 2007-2008 के लिए निम्नलिखित शर्तों के अधीन रहते हुए उक्त उप खंड के प्रयोजनार्थ अधिसूचित करती है, अर्थात् :—

(i) कर-निर्धारिती अपनी आय का इस्तेमाल अथवा अपनी आय का इस्तेमाल करने के लिए उसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है;

(ii) कर-निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जवाहिरात, फर्नीचर अथवा किसी अन्य वस्तु

आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा;

- (iii) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी, जोकि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक कि ऐसा कारोबार उक्त कर निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों;
- (iv) कर-निर्धारिती आयकर अधिनियम, 1961 के प्रावधानों के अनुसार अपनी आय विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष दाखिल करेगा;
- (v) विघटन की स्थिति में इसकी अतिरिक्त राशियां और परिसम्पत्तियां समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएंगी।

[अधिसूचना सं. 240/2004/फा. सं. 197/52/2004-आयकर नि-1]

देवी शरण सिंह, अवर सचिव

New Delhi, the 10th September, 2004

(INCOME-TAX)

S.O. 2367.—In exercise of powers conferred by the Sub-clause (v) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the "The Divine Life Society, Distt. Tehri Garhwal, Uttaranchal" for the purpose of the said sub-clause for the assessment years 2005-2006 to 2007-2008 subject to the following conditions, namely :—

- (i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;
- (ii) the assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above other wise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;
- (iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;
- (iv) the assessee will regularly file its return of income before the Income-tax authority in accordance with the provisions of the Income-tax Act, 1961;
- (v) that in the event of dissolution, its surplus and the assets will be given to a

charitable organisation with similar objectives.

[Notification No. 240/2004/F. No. 197/52/2004-ITA-I]

DEVI SHARAN SINGH, Under Secy.

नई दिल्ली, 13 सितम्बर, 2004

(आयकर)

का. आ. 2368.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा "पूना डिस्ट्रिक्ट एण्ड मेट्रोपोलिटन बैडमिन्टन एसोसिएशन, पुणे" को वर्ष 1993-1994 से 1995-96 तक के लिए निम्नलिखित शर्तों के अधीन रहते हुए उक्त उप खंड के प्रयोजनार्थ अधिसूचित करती है, अर्थात् :—

- (i) कर-निर्धारिती अपनी आय का इस्तेमाल अथवा अपनी आय का इस्तेमाल करने के लिए उसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है;
- (ii) कर-निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जवाहिरात, फर्नीचर अथवा किसी अन्य वस्तु आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा;
- (iii) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी, जोकि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक कि ऐसा कारोबार उक्त कर निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों;
- (iv) कर-निर्धारिती आयकर अधिनियम, 1961 के प्रावधानों के अनुसार अपनी आय विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष दाखिल करेगा;
- (v) विघटन की स्थिति में इसकी अतिरिक्त राशियां और परिसम्पत्तियां समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएंगी।

[अधिसूचना सं. 241/2004/फा. सं. 196/10/2004-आयकर नि-1]

देवी शरण सिंह, अवर सचिव

New Delhi, the 13th September, 2004

(INCOME-TAX)

S.O. 2368.—In exercise of powers conferred by the clause (23) of Section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the "Poona District & Metropolitan Badminton Association, Pune" for the purpose of the said sub-clause

for the assessment years 1993-94 to 1995-96 subject to the following conditions, namely :—

- (i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;
- (ii) the assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;
- (iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;
- (iv) the assessee will regularly file its return of income before the Income-tax authority in accordance with the provisions of the Income-tax Act, 1961;
- (v) that in the event of dissolution, its surplus and the assets will be given to a charitable organisation with similar objectives.

[Notification No. 241/2004/F. No. 196/10/2004-ITA-I]

DEVI SHARAN SINGH, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 10 सितम्बर, 2004

का० आ० 2369.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) योजना, 1970 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उपधारा (3) के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री एच०आर० खान, प्रधानाचार्य, कृषि बैंकिंग महाविद्यालय, पुणे को तत्काल प्रभाव से और अगला आदेश होने तक, श्री पी० विजय भास्कर के स्थान पर देना बैंक के निदेशक के रूप में नामित करती है।

[फा० सं० 9/2/2004-बी०ओ० आई०]

रमेश चन्द, अवर सचिव

(Department of Economic Affairs)

(BANKING DIVISION)

New Delhi, the 10th September, 2004

S.O. 2369.—In exercise of the powers conferred by clause (c) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, hereby nominates Shri H.R. Khan, Principal, College of Agricultural Banking, Pune as a Director of Dena Bank

with immediate effect and until further orders vice Shri P. Vijaya Bhaskar.

[F. No. 9/2/2004-B.O.I.]

RAMESH CHAND, Under Secy.

विदेश मंत्रालय

सी० पी० वी० डिवीजन

नई दिल्ली, 11 सितम्बर, 2004

का० आ० 2370.—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम 1948 (1948 का 41वां) को धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का राजदूतावास, मस्कत में श्रीमती अनुराधा नेगी, सहायक को 11-09-2004 से सहायक कौंसली अधिकारी का कार्य करने हेतु प्राधिकृत करती है।

[फा० सं० टी-4330/01/2004]

उपेन्द्र सिंह रावत, अवर सचिव (कौंसलर)

MINISTRY OF EXTERNAL AFFAIRS

(C.P.V. Division)

New Delhi, the 11th September, 2004

S.O. 2370.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Smt. Anuradha Negi, Assistant in the Embassy of India, Muscat to perform the duties of Assistant Consular Officer with effect from 11-09-2004.

[F. No. T-4330/01/2004]

U.S. RAWAT, Under Secy (Cons.)

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 16 सितम्बर, 2004

का० आ० 2371.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार भारतीय आयुर्विज्ञान परिषद् से परामर्श करने के पश्चात् उक्त अधिनियम की प्रथम अनुसूची में एतद्वारा निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अनुसूची में—

(क) शीर्षक "मान्यताप्राप्त चिकित्सा अर्हता" [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत "अन्तर्गत चिकित्सालय" के सामने, अंतिम प्रविष्टि तथा शीर्षक "पंजीकरण के लिए संक्षेप" [इसके अन्तर्गत स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत उससे संबंधित प्रत्येक प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :—

(2)	(3)
"डॉक्टर आफ मेडिसिन	एम.डी. (शरीर रचना विज्ञान)
(शरीर रचना विज्ञान)	(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह राजा मुथैया मेडिकल कालेज, अन्नामलै नगर में शिक्षित छात्रों के संबंध में नवम्बर 2003 में अथवा उसके पश्चात् प्रदान की गई है।"

(ख) "डा० बाबासाहेब अम्बेडकर मराठावाड़ा विश्वविद्यालय" के सामने स्तंभ (2) में अंतिम प्रविष्टि तथा स्तंभ (3) में उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसिन (फॉरेन्सिक मेडिसिन)	एम०डी० (फॉरेन्सिक मेडिसिन)
	(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह गवर्नमेंट मेडिकल कालेज, औरंगाबाद में प्रशिक्षित छात्रों के संबंध में मई, 1983 में अथवा उसके पश्चात् प्रदान की गई हो)"

(ग) "भरथियार विश्वविद्यालय" के सामने स्तंभ (2) में अंतिम प्रविष्टि तथा स्तंभ (3) में उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :—

(2)	(3)
"बाल स्वास्थ्य में डिप्लोमा	डी०सी०एच०
	(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह कोयम्बटूर मेडिकल कालेज, कोयम्बटूर में प्रशिक्षित छात्रों के संबंध में अप्रैल, 1982 में अथवा उसके पश्चात् प्रदान की गई हो)"

(घ) "डिब्रूगढ़ विश्वविद्यालय" के सामने स्तंभ (2) में अंतिम प्रविष्टि तथा स्तंभ (3) में उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :—

(2)	(3)
"मास्टर आफ सर्जरी (विकलांग विज्ञान)	एम०एस० (आर्थो.)
	(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह असम मेडिकल कालेज, डिब्रूगढ़ में प्रशिक्षित छात्रों के संबंध में मई, 1992 में अथवा उसके पश्चात् प्रदान की गई हो)"

(ङ) "महर्षि दयानंद विश्वविद्यालय, रोहतक" के सामने स्तंभ (2) में अंतिम प्रविष्टि तथा स्तंभ (3) में उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसिन (मनश्चिकित्सा)	एम०डी० (मनश्चिकित्सा)
	(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह पं० बी०डी० शर्मा पी.जी. इन्स्टीट्यूट आफ मेडिकल साइंसिज, रोहतक में प्रशिक्षित छात्रों के संबंध में 1994 में अथवा उसके पश्चात् प्रदान की गई हो)"
"मनोवैज्ञानिक चिकित्सा में डिप्लोमा	डी.पी.एम.
	(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह पं० बी.डी. शर्मा पी.जी.

(2)

(3)

इन्स्टीट्यूट आफ मेडिकल साइंसिज, रोहतक में प्रशिक्षित छात्रों के संबंध में 1993 में अथवा उसके पश्चात् प्रदान की गई हो)"

(च) "मराठावाड़ा विश्वविद्यालय" के सामने स्तंभ (2) में अंतिम प्रविष्टि तथा स्तंभ (3) में उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसिन (फॉरेन्सिक मेडिसिन)	एम.डी. (फॉरेन्सिक मेडिसिन)
	(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह गवर्नमेंट मेडिकल कालेज, औरंगाबाद में प्रशिक्षित छात्रों के संबंध में मई, 1983 में अथवा उसके पश्चात् प्रदान की गई हो)"

(छ) "पंजाब विश्वविद्यालय" के सामने स्तंभ (2) में अंतिम प्रविष्टि तथा स्तंभ (3) में उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसिन (जीव रसायन)	एम.डी. (जीव रसायन)
	(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह क्रिश्चियन मेडिकल कालेज, लुधियाना में प्रशिक्षित छात्रों के संबंध में दिसम्बर, 1995 में अथवा उसके पश्चात् प्रदान की गई हो)"

(ज) "सरदार पटेल विश्वविद्यालय" के सामने स्तंभ (2) में अंतिम प्रविष्टि तथा स्तंभ (3) में उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसिन (बाल रोग चिकित्सा)	एम.डी. (बाल रोग चिकित्सा)
	(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह प्रमुखस्वामी मेडिकल कालेज, करमसाड में प्रशिक्षित छात्रों के संबंध में मार्च, 2004 में अथवा उसके पश्चात् प्रदान की गई हो)"
"चिकित्सा विकिरण निदान में डिप्लोमा	डी.एम.आर.डी.
	(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह प्रमुखस्वामी मेडिकल कालेज, करमसाड में प्रशिक्षित छात्रों के संबंध में दिसम्बर, 2003 में अथवा उसके पश्चात् प्रदान की गई हो)"

(झ) “द तमिलनाडु डा. एम.जी.आर. मेडिकल यूनिवर्सिटी चेन्नई” के सामने स्तंभ (2) में अंतिम प्रविष्टि तथा स्तंभ (3) में उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :—

(2)	(3)
“त्वचा रोग विज्ञान, रतिज रोग	डी.डी.वी.एल. विज्ञान तथा कुष्ठ में डिप्लोमा (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह पी.एस.जी. इंस्टीट्यूट आफ मेडिकल साइंसिज एंड रिसर्च, कोयम्बटूर में प्रशिक्षित छात्रों के संबंध में अक्टूबर, 2003 में अथवा उसके पश्चात् प्रदान की गई हो)”

[सं. सी-11015/16/2004-एम.ई.(नीति-1)]

पी.जी. कलाधरण, अवर सचिव

**MINISTRY OF HEALTH AND FAMILY
WELFARE**

(Department of Health)

New Delhi, the 16th September, 2004

S.O. 2371. —In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule—

(a) against “Annamalai University”, under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
“Doctor of Medicine (Anatomy)	M.D. (Anatomy) (This shall be a recognised medical qualification when granted in or after November, 2003 in respect of students trained at Raja Muthiah Medical College, Annamalainagar)”;

(b) against “Dr. Babasaheb Ambedekar Marathwada University”, in column (2), after the last entry and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
“Doctor of Medicine (Forensic Medicine)	M.D. (Forensic Medicine) (This shall be a recognised medical qualification when

(2)

(3)

granted in or after May, 1983 in
respect of students trained at
Government Medical College,
Aurangabad”;

(c) against “Bharthiar University”, in column (2), after the last entry and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
“Diploma in Child (Health)	D.C.H. (This shall be a recognised medical qualification when granted in or after April, 1982 in respect of students trained at Coimbatore Medical College, Coimbatore)”;

(d) against “Dibrugarh University”, in column (2), after the last entry and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
“Master of Surgery (Orthopaedics)	MS (Ortho.) (This shall be a recognised medical qualification when granted in or after May, 1992 in respect of students trained at Assam Medical College, Dibrugarh)”;

(e) against “Maharishi Dayanand University Rohtak”, in column (2), after the last entry and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
“Doctor of Medicine (Psychiatry)	M.D (Psychiatry) (This shall be a recognised medical qualification when granted in or after 1994 in respect of students trained at Pt. B.D. Sharma P.G. Instt. of Medical Sciences, Rohtak)”;
“Diploma in Psycho- (logical Medicine)	D.P.M. (This shall be a recognised medical qualification when granted in or after 1993 in respect of students trained at Pt. B.D. Sharma P.G. Instt. of Medical Sciences, Rohtak)”;

(f) against "Marathwada University", in column (2), after the last entry and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
"Doctor of Medicine (Forensic Medicine)	M.D. (Forensic Medicine)
	(This shall be a recognised medical qualification when granted in or after May, 1983 in respect of students trained at Government Medical College, Aurangabad);

(g) against "Punjab University", in column (2), after the last entry and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
"Doctor of Medicine (Biochemistry)	M.D. (Biochemistry)
	(This shall be a recognised medical qualification when granted in or after December, 1995 in respect of students trained at Christian Medical College, Ludhiana);

(h) against "Sardar Patel University", in column (2), after the last entry and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
"Doctor of Medicine (Paediatrics)	M.D. (Paed.)
	(This shall be a recognised medical qualification when granted in or after March, 2004 in respect of students trained at Pramukhswami Medical College, Karamsad);

"Diploma in Medical (Radiology Diagnosis)	D.M.R.D.
	(This shall be a recognised medical qualification when granted in or after December 2003, in respect of students trained at Pramukhswami Medical College, Karamsad);

(i) against "The Tamilnadu Dr. M.G.R. Medical University Chennai", in column (2), after the last entry and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
"Diploma in Dermatology, Venereology and Leprosy	D.D.V.L.
	(This shall be a recognised medical qualification when granted in or after October 2003, in respect of students trained at P.S.G. Institute of Medical Sciences & Research, Coimbatore);
	[No. V-11015/16/2004-ME(Policy-I)]
	P.G. KALADHARAN, Under Secy.

भारी उद्योग एवं लोक उद्यम मंत्रालय

(भारी उद्योग विभाग)

नई दिल्ली, 10 सितम्बर, 2004

का० आ० 2372.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम-4 के अनुसरण में, निम्नलिखित कार्यालय को, जिसके 80 प्रतिशत से अधिक, अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

भारत भारी उद्योग निगम लिमिटेड,
भारत सरकार का एक उपक्रम,
26, राजा संतोष रोड, अलीपुर
कोलकाता-700027,
पश्चिम बंगाल।

[सं. ई-11012/1/2001-हिन्दी]

विजय कुमार कालड़ा, विशेष कार्य अधिकारी

MINISTRY OF HEAVY INDUSTRY AND PUBLIC ENTERPRISES

(Department of Heavy Industry)

New Delhi, the 10th September, 2004

S.O. 2372.—In pursuance of the sub-rule (4) of rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office whereof more than 80% of staff have acquired the working knowledge of Hindi :—

Bharat Bhari Udyog Nigam Limited.
A Government of India Undertaking,
12, Raja Santosh Road, Ali Pore,
Kolkata-700027 (W.B.)

[No. E. 11012/1/2001-Hindi]

VIJAY KUMAR KALRA, Officer on Special Duty

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 21 सितम्बर, 2004

का.आ. 2373.— भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (को) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1	आई एस 12650 : 2003	संशोधन सं. 2 सितम्बर 2004	तत्काल प्रभाव से

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो मानक भवन, 9 बहुदर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : टी एक्स डी : 03/टी-62]

संजय दासगुप्ता, उप महानिदेशक (तकनीकी-I)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 21st September, 2004

S.O. 2373.—In pursuance of clause (b) of Sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 12650 : 2003	Amendment No. 2 Septem- per, 2004	With Imme- diate effect

Copy of this Standards is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: TXD: 03/T-62]

SANJAY DASGUPTA, Deputy Director General (Technical-I)

शहरी रोजगार और गरीबी उपशमन मंत्रालय

नई दिल्ली, 31 अगस्त, 2004

का.आ. 2374.— भारत सरकार एतद्वारा शहरी रोजगार और गरीबी उपशमन मंत्रालय के प्रशासनिक नियंत्रण में हुडको क्षेत्रीय कार्यालय, हैदराबाद को, जिसमें 80% से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, राजभाषा (संघ के शासकीय प्रयोजनों के लिये प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अंतर्गत अधिसूचित करती है।

[सं. ई-11014/4/2000-हिन्दी]

एम. राजामणि, संयुक्त सचिव

MINISTRY OF URBAN EMPLOYMENT AND POVERTY ALLEVIATION

New Delhi, the 31st August, 2004

S.O. 2374.—The Government of India in pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for the Official purposes of the Union) Rules, 1976 hereby notifies the HUDCO Regional Office, Hyderabad under the administrative control of the Ministry of Urban Employment and Poverty Alleviation, where more than 80% of staff have acquired working knowledge in Hindi.

[No. E-11014/4/2000-Hindi]

M. RAJAMANI, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 16 सितम्बर, 2004

का.आ. 2375.— केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि आंध्र प्रदेश राज्य में लिंगाला जी.जी.एस.-II से के. के. जैन एवं मीना जैन इन्टरप्राइजेज पाइपलाइन परियोजना तक प्राकृतिक गैस के परिवहन के लिए गेल (इंडिया) लिमिटेड द्वारा, एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है और जो इस अधिसूचना से

संलग्न अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) को धारा 3 को उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम को धारा 3 को उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के संबंध में, श्री बी. हेमसुन्दर, सक्षम प्राधिकारी, गेल (इण्डिया) लिमिटेड, जेट्टी एवेन्यू, दानावैपेट, राजामुन्द्री-533 103 (आंध्र प्रदेश) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

जिला	तहसील	गाँव	सर्वे नं.	आर. ओ. यू. अर्जित करने के लिए क्षेत्रफल (हेक्टेयर में)
1	2	3	4	5
कृष्णा	मुदिनेपल्लि	चिगुरुकोट	373/2 भाग	0.1538
			372/1 भाग	0.0769
			367/1 भाग	0.2428
			367/1 भाग	0.1255
			371 भाग	0.0324
			योग	0.6314
कृष्णा	मंडवल्लि	पेरिकिगुडेम	887 भाग	0.0200
			योग	0.0200

[फा. सं. एल-14014/28/04-जी.पी.]

एस. बी. मण्डल, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, 16th September, 2004

S.O. 2375.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of natural gas through Lingala GGS-II to M/s. K. K. Jain & Meena Jain Enterprises pipeline project in the State of Andhra Pradesh, a pipeline should be laid by the GAIL (India) Limited;

And, whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the Right of User in the land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of the notification issued under Sub-section (1) of Section 3 of the said Act, as published in the Gazette of India are made available to the general public, object in writing to the laying of the pipeline under the land to the Sh. B. Hemasundar, Competent Authority, GAIL (India) Limited, Jetty Avenue, Danavaipeta, Rajahmundry-533 103 (Andhra Pradesh).

SCHEDULE

Distt.	Tehsil	Village	Survey No.	Area to be Acquired for R.O.U. (in Hectares)
1	2	3	4	5
Krishna	Mudine- palli	Chiguru- kota	373/2 Part	0.1538
			372/1 Part	0.0769
			367/1 Part	0.2428
			267/1 Part	0.1255
			371 Part	0.0324
			Total	0.6313
Krishna	Mandavalli	Penki- gudem	887 Part	0.0200
			Total	0.200

[F No. L-14014/28/04-G.P.]

S. B. MANDAL, Under Secy.

नई दिल्ली, 16 सितम्बर, 2004

का.आ. 2376.— केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में डाबका जी.जी.एस.-जनता ग्लास वर्क्स पाइपलाइन परियोजना तक प्राकृतिक गैस के परिवहन के लिए गेल (इंडिया) लिमिटेड द्वारा, एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसमें उक्त

पाइपलाइन बिछाए जाने का प्रस्ताव है और जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के संबंध में, श्री आर.एस. रानाडे, सक्षम प्राधिकारी, गेल (इण्डिया) लिमिटेड, दर्पण भवन, आर.सी. दत्त रोड, अलकापुरी, बड़ौदा-390007 (गुजरात) को लिखित रूप में आक्षेप भेजा सकेगा।

अनुसूची

जिला	तहसील	गाँव	सर्वे नं०	आर० ओ० यू० अर्जित करने के लिए क्षेत्रफल (हेक्टेयर में)
1	2	3	4	5
वदोदरा	पादरा	गवासद	145	0-03-50
			152	0-04-20
		सरकारी भूमि		0-02-16
			148	0-08-47
		सरकारी भूमि		0-01-25
			149	0-08-45
		Canal		0-01-05
		बैलगाड़ी रास्ता		0-01-40
			315	0-10-85
		नहर		0-00-81
			316	0-00-21
			323	0-05-04
			322	0-02-97
			328	0-01-30
			329	0-04-90
			330	0-04-40
			331	0-01-44

1	2	3	4	5
			332	0-03-40
			333	0-01-86
			334	0-02-82
		बैलगाड़ी रास्ता		0-01-24
			396	0-19-25
		बैलगाड़ी रास्ता		0-01-31
			369	0-05-56
			370	0-05-86
			371	0-03-15
			378	0-02-32
			377	0-06-18
			375	0-06-39
			393	0-02-03
			392	0-03-43
		बैलगाड़ी रास्ता		0-00-73
		जनता ग्लास सं०		0-05-11
		योग		1.38-04

[फ़ॉ० सं० एल-14014/29/04-जी०पी०]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 16th September, 2004

S.O. 2376.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of natural gas through Dabka GGS to Janta Glass Works pipeline project in the State of Gujarat, a pipeline should be laid by the GAIL (India) Limited;

And, whereas it appears to Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the Right of User in the land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of the notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India are made available to the general

public, object in writing to the laying of the pipeline under the land to the Sh. R. S. Ranade, Competent Authority, GAIL (India) Limited, Darpan Building, R. C. Dutt Road, Alkapuri, Baroda-390 007 (Gujarat).

SCHEDULE

Distt.	Tehsil	Village	Survey No.	Area to be Acquired for R.O.U. (in Hectares)
1	2	3	4	5
Vadodara	Padra	Gavasad	145	0-03-50
			152	0-04-20
			Govt. Land	0-02-16
			148	0-08-47
			Govt. Land	0-01-25
			149	0-08-45
			Canal	0-01-05
			Cart Track	0-01-40
			315	0-10-85
			Canal	0-00-81
			316	0-05-21
			323	0-05-04
			322	0-02-97
			328	0-01-30
			329	0-04-90
			330	0-04-40
			331	0-01-44
			332	0-03-40
			333	0-01-86
			334	0-02-82
			Cart Track	0-01-24
			396	0-19-25
			Cart Track	0-01-31
			369	0-05-56
			370	0-05-86
			371	0-03-15
			378	0-02-32
			377	0-06-18
			375	0-06-39

1	2	3	4	5
Vadodara	Padra	Gavasad	393	0-02-03
			392	0-03-43
			Cart Track	0-00-73
			Janta Glass Co.	0-05-11
			Total	1.38-04

[F.No. L-14014/29/04-G.P.]

S. B. MANDAL, Under Secy.

नई दिल्ली, 16 सितम्बर, 2004

का. अ. 2377.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का०आ० 666 तारीख 11-3-2004 द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गेल (इण्डिया) लिमिटेड द्वारा पॉडिचेरी केन्द्र शासित प्रदेश में बॉस प्रोफाइल से अदिथ्या फेरो एलॉएज पाइपलाइन परियोजना के माध्यम से प्राकृतिक गैस के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के आशय की घोषणा की थी;

और उक्त राजपत्रित अधिसूचना की प्रतियां जनता को तारीख 22-6-2004 को उपलब्ध करा दी गई थीं;

और पाइपलाइन बिछाने के संबंध में जनता से प्राप्त आक्षेपों पर सक्षम प्राधिकारी द्वारा विचार कर लिया गया है और अननुज्ञात कर दिया गया है;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित हैं, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि उक्त पाइपलाइन बिछाने के लिए भूमि में उपयोग का अधिकार, इस घोषणा

के प्रकाशन की तारीख को केन्द्रीय सरकार में निहित होने की बजाए, पाइपलाइनें बिछाने का प्रस्ताव करने वाली गेल (इण्डिया) लिमिटेड में निहित होगा और तदुपरि, भूमि में ऐसी उपयोग का अधिकार, इस प्रकार अधिरोपित निबंधनों और शर्तों के अधीन रहते हुए, सभी वित्तीयगमों से मुक्त, गेल (इण्डिया) लिमिटेड में निहित होगा।

अनुसूची

जिला	तहसील	गाँव	सर्वे नं०	आर० ओ० यू० अर्जित करने के लिए क्षेत्रफल (हेक्टेयर में)
1	2	3	4	5
पोंडिचेरी	कराइकल	16. सोराकुडी	241-2	0.01.0 सरकारी भूमि
			252-1ए	0.05.0
			253	0.08.5
			254-2ए	0.02.0
			254-2बी	0.07.0
			255-4	0.03.0
			255-5	0.08.0
			256-1	0.12.0
			कुल	0.47.5

[फा. सं. एल-14014/36/03-जी.पी.]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 16th September, 2004

S.O. 2377.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 666, dated the 11-3-2004 issued under Sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying pipeline for transport of Natural Gas through Boss Profiles-Adithya Ferro Alloys pipeline project in the Union Territory of Pondicherry by the Gail (India) Limited;

And whereas copies of the said Gazette notification were made available to the public on the 22-6-2004;

And whereas the objections received from the public to the laying of the pipeline have been considered and disallowed by the competent authority;

And whereas the competent authority has, under Sub-section (1) of Section 6 of the said Act, submitted its report to the Central Government;

And whereas the Central Government has, after considering the said report, decided to acquire the Right of User in the lands specified in the Schedule;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the lands specified in the Schedule is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by Sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the Right of User in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest, on this date of the publication of this declaration, in the GAIL (India) Limited, free from all encumbrances.

SCHEDULE

Distt.	Tehsil	Village No. and Name	Survey No.	Area to be Acquired for R.O.U. (in Hectares)
1	2	3	4	5
Pondicherry	Karaikal	16. Sora-kudy	241-2	0.01.0 Govt. Plot
			252-1A	0.05.0
			253	0.08.5
			254-2A	0.02.0
			254-2B	0.07.0
			255-4	0.03.0
			255-5	0.08.0
			256-1	0.12.0
			Total	0.47.5

[F. No. L-14014/36/03-G.P.]

S. B. MANDAL, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 31 अगस्त, 2004

का. आ. 2378.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिन्टेन्डेन्ट ऑफ पोस्ट ऑफिसों के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 114/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-8-04 को प्राप्त हुआ था।

[सं. एल-40012/79/2003-आईआर (डीयू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 31st August, 2004

S.O. 2378.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 114/2003) of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Superintendent of Post Offices and their workman, which was received by the Central Government on 31-8-04

[No. L-40012/79/2003-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Thursday, the 22nd July, 2004

PRESENT:

K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE No. 114/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Superintendent of Post Offices, Nagapattinam Division and their workman)

BETWEEN

Sri N. Mahalingam : I Party/Petitioner

2779-5 Mss 201 to 221

AND

The Superintendent of Post Offices, Nagapattinam Division, Nagapattinam : II Party/Management

APPEARANCE:

For the Workman : M/s S. Jothivani, Advocates

For the Management : Mr K. Sivajothi, ACGSC

AWARD

The Central Government, Ministry of Labour vide Order No. L-40012/79/2003-IR(DU) dated 23-06-2003 has referred the following dispute to this Tribunal for adjudication :—

“Whether the appointment of Inquiry Officer and Presenting Officer by the defendant is correct and within the rules of P & T EDA (C & S) Rules, 1964? If not, what relief the workman is entitled to?”

2. After the receipt of the reference, it was taken on file as I.D. No. 114/2003 and notices were issued to both the parties and both the parties entered appearance through their Advocates and filed their Claim-Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was appointed as Extra Departmental Branch Post Master, Akkaraivattam branch office under Niravi Sub Office in the year 1969 by the Senior Superintendent of Post Offices, Nagapattinam Division. While working so, the Respondent/Management vide memo No. F1/6/86-89 dated 30-3-88 alleged the following charges against the I Party. The first charge is that the Petitioner, while working as EDBPM in Akkaraivattam branch office on 1-4-86 did not bring into account the deposit of Rs. 50 made into S.B. account No. 291273 in the names of Mr. Harigovidan and Govindasamy and thus, contravened the rules 131 of Book of Branch Office Rules. Secondly, the Petitioner while working as Branch Post Master on 21-11-86 made withdrawal of Rs. 30 from S.B. Account No. 291293 in the name of Sri Abboorvasamy without the knowledge of the depositor. Thirdly, while working as BPM, the Petitioner used his official position and secured hand loan of Rs. 4000 from Mr. Arokiasamy Albert on 15-9-86. Thus, the II Party/Management alleged that the Petitioner failed to maintain absolute integrity and devotion to duty as mentioned under Rule 17 of EDA (Conduct & Services) Rules, 1964. Then the Post Master General appointed the Senior Superintendent of Post

Offices, Thanjavur as ad-hoc Disciplinary Authority. Then by a memorandum dated 10-5-88, the II Party/Management appointed Sri A. Selvarajan, Assistant Superintendent of Post Offices, Nagapattinam as Enquiry Officer to enquire into the charges. Finally, the Enquiry Officer submitted his report dated 26-10-90 holding that out of the three charges pending against the Petitioner, first charge was proved and second and third charges were not proved. Then the ad-hoc Disciplinary Authority, on the basis of the enquiry report imposed severe punishment of dismissal from service by an order dated 22-3-91. Aggrieved by the order, the Petitioner submitted an appeal to the Director of Postal Services, but he has rejected the appeal by an order dated 20-12-91. Again, the Petitioner submitted a review petition to the Chairman of Postal Services Board and he also rejected the petition. Again, aggrieved by the said order, the Petitioner preferred a petition under Section 2A of Industrial Disputes Act, 1947 before the Regional Labour Commissioner (Central) and on the failure of conciliation, the matter has been referred to this Tribunal. Though, the II Party/Management placed the Petitioner under put off duty w.e.f. 19-1-87, the Respondent has not paid any subsistence allowance and therefore, it is in violation of principles of natural justice and it is unconstitutional and violative of Article 14 of Constitution of India and therefore, the whole enquiry proceedings is vitiated. In the enquiry, the Petitioner through his letter dated 14-4-88 has requested the II Party/Management to furnish the copy of documents to submit his reply against the charges for which the II Party/Management has refused to furnish those documents. Therefore, it amounts to refusal of reasonable opportunity to go through the evidence. The Post Master General appointed the Senior Superintendent of Post Offices, Thanjavur, as the II Party is lower in rank from the authority who initially appointed the official and will not be in a position to exercise the power of authority incompetent to impose the penalty specified under Rule 7 of P&T EDA(C&S) Rules, 1974. Therefore, it is evident that the II Party/Management is not competent to impose penalty on the I Party and it is incompetent to appoint Mr. Selvarajan, Assistant Superintendent of Post Offices, Nagapattinam as Enquiry Officer. Therefore, the entire enquiry proceedings were held to be illegal and it is not valid in law. Further, the Presenting Officer appointed by the II Party/Management is also not proper. As such, the appointment of Enquiry Officer and presenting Officer are illegal and the Enquiry Officer acted without any jurisdiction and as such, his report is nullity and the punishment imposed by Senior Superintendent of Post Offices, Nagapattinam on the basis of Enquiry Officer's report is also illegal and non-est in the eye of law. The issuance of chargesheet itself is not valid in law. Since the Enquiry Officer is a nominee of the II Party/Management, he cannot be expected to be fair when his immediate superior arrived at a definite conclusion and as such the Enquiry Officer is biased and the enquiry conducted by him is nullity.

The Enquiry Officer individually examined the witnesses on 18-11-88, but due to ill health, the Petitioner could not attend the enquiry on 18-11-88, and the Petitioner by means of telegram on 17-11-88 has requested the Enquiry Officer to postpone the enquiry. But, despite the receipt of telegram, the Enquiry Officer has conducted the enquiry ex-parte and it is vitiated. The petitioner on 5-2-90 has called for 20 additional documents and also copy of documents shown in Annexure III to chargesheet relied on by the II Party/Management to prove the charges. But, the Enquiry officer has refused to call for these documents, though the reasons for perusing these documents have been mentioned in his letter. The Enquiry Officer has taken hyper technical objection for refusing to send for those documents. This amounts to denial of reasonable opportunity to the Petitioner. In order to prove his innocence, the Petitioner requested the Enquiry Officer to produce witnesses who deposed against the I Party behind his back during the preliminary issue. But, the Enquiry Officer instead of acting reasonably has refused to call for them by substituting his own evidence hence it is arbitrary and illegal. Therefore, the evidence recorded behind the back of Petitioner sought to be used against him without giving an opportunity to challenge the veracity of statement is bad in law. Further, the punishment imposed by the Disciplinary Authority is severe and excessive and disproportionate. Recovery of penal interest constitutes as punishment and therefore, after levying recovery of penal interest for the amount and also imposing the punishment of dismissal amounts to double jeopardy. Therefore, for all these reasons, the Petitioner prays that an award may be passed to set aside the order impugned passed by Respondent/Management and also to order reinstatement of Petitioner in service with consequential benefits.

4. As against this, the Respondent in its Counter Statement contended that no doubt the Petitioner was appointed as BPM, Akkaraivattam BO w.e.f. 27-2-69 by Senior Superintendent of Post Offices, Nagapattinam and no doubt, he Senior Superintendent of Post Offices, Thanjavur was appointed as ad-hoc Disciplinary Authority, since the Petitioner was initially appointed by the Senior Superintendent of Post Offices, Nagapattinam to decide the case against the Petitioner, in order to fulfil the conditions under Article 311(1) of Constitution of India, he was appointed. The said article envisages that only punishment should not be imposed by an officer lower in rank than the appointing authority and it does not bar the normal Disciplinary Authority in issue of chargesheet, appointment of Enquiry Officer and Presenting Officer etc. as made by him. Therefore, the averment of Petitioner does not hold any water. The condition that Enquiry Officer, should be higher in rank than the charged official has been duly fulfilled. No violation of rule has been done by the Enquiry Officer. Only after going through the entire evidence, the Appellate Authority has rejected the appeal

by a speaking order. The revision petition also was dismissed by Appellate Authority by a reasoned speaking order. The petitioner, while working as BPM Akkaraivattam B.O. w.e.f. 27-2-69 committed frauds to the tune of Rs. 1,768.55 by suppression of deposits in S.B./R.D. Schemes and also non-payment of Money Orders to Payees. So, the Petitioner was placed under put off duty w.e.f. 18-12-86 afternoon. As per EDA (Conduct & Services) Rules, EDAs are not entitled for subsistence allowance. Hence, the question of non-payment of ex-gratia amount to the Petitioner does not arise at all. Further, as per the orders of Director General of Post, New Delhi, now Rule 9 of EDA (conduct & Service) Rules, 1964 amended and ex-gratia payment is applicable to only EDAs who are placed under off duty after the communication of the above said letters of the Director General of Post, New Delhi. Therefore, the Petitioner is not entitled for payment of ex-gratia from 18-12-86 to 22-3-91 i.e. before implementation of the letters dated 13-1-97 to 1-8-99. Therefore, the procedure prescribed in conduct of enquiry has been completed and full opportunity was afforded to the Petitioner to defend the case at every stage. The charge sheet was delivered to Petitioner on 2-4-88. The Petitioner did not submit his written representation within the limit and so the enquiry under Rule 8 of P&T EDA (C & S) Rules, 1964 was ordered. Instead of submitting his written representation or otherwise, the Petitioner requested to supply copies of documents and as per provisions of Rule 8 of EDA (C&S) Rules read with Rule 14(3) and 15 of CCS (CCA) Rules, 1965, there is no provision for supplying copies of documents at the time of issuing charge sheet to the charged official for submitting his representation. Under such circumstances, it cannot be said that no opportunity was provided to the Petitioner to submit his representation. Therefore, the prescribed authority appointing is competent under Rule 7 and 8 of EDA (C&S) Rules, 1964 to initiate disciplinary proceedings and there may not be any objection, if the prescribed appointing authority issued the charge sheet and also orders enquiry in major disciplinary case for satisfying the requirements under Article 311(1) of Constitution. Therefore, the appointment of Enquiry Officer by the prescribed appointing authority i.e. Senior Superintendent of Post Offices, Nagapattinam in this case is in order and he has power to appoint the Enquiry Officer and Presenting Officer under Rule 8 Major Disc case as per letter dated 16-12-81 of Director General of Posts, New Delhi. The Petitioner committed multiple frauds in public money and spoiled the image of the department and hence the Petitioner is deserved the punishment of dismissal from service and it commensurate with the gravity of the offence. Since the letter given by the Petitioner does not contain relevance of document nor the authority to whom they belong, the Enquiry Officer rightly held that these documents need not be sent for at that time. The Petitioner attended the enquiry along with his defence representative and inspected all the documents and copies of listed

documents were also supplied to him. Therefore, the Enquiry Officer has held it is quite unnecessary to call for copies of listed documents which had already been supplied during the inspection of documents. The Petitioner had committed multiple fraud to the tune of Rs. 1,768.55 and any substantial loss of public money has to be recovered from the official who has misappropriated the amount with penal interest, towards loss and this cannot be said as double jeopardy. Recovery of loss from the official at fault along with penal interest, if any and proceedings against him departmentally for violation of departmental rules are two different matters. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are—

- (i) "Whether the appointment of Enquiry Officer and Presenting Officer by the Respondent/ Management is correct and within the rules of P & T EDA (C&S) Rules, 1964?"
- (ii) "To what relief, the Petitioner is entitled?"

Point No. 1 :—

6. In this case, it is an admitted fact that Sri N. Mahalingam, the Petitioner was appointed as Extra Departmental Branch Postmaster, Akkaraivattam B.O. under Neravy Sub Office in the year 1969 and he was dismissed from service by an order dated 22-3-91 by the ad-hoc Disciplinary Authority on the basis of enquiry report. The Petitioner contended that the order passed by the ad-hoc Disciplinary Authority is not valid in law as it is *ab initio* void, arbitrary and in violation of principles of natural justice and therefore, he wants this Tribunal to set aside the order passed by the Disciplinary Authority and to reinstate him in service.

7. On behalf of the Petitioner, 11 documents namely Ex. W1 to W11 were marked and on behalf of the II Party/ Management 67 documents as Ex. M1 to M 67 were marked and neither side examined any witness.

8. Against the Petitioner, three charges were framed and the first charge is while the Petitioner was working as Extra Departmental Branch Post Master, Akkaraivattam B.O. on 1-4-86, even though he has received Rs. 50 towards deposit of S.B. account No. 291273 in the names of Sri Harigovindan and K. Govindasamy, he has not brought into the accounts of post office and thus he has contravened the Rule 131 of Book of B.O. Rules. The second charge is that the Petitioner while working as BPM on 21-11-1986 made a withdrawal of Rs. 30 from S.B. Account No. 291293 in the name of Sri Abborvasamy without the knowledge of the depositor and the third charge is that while he was working as Branch Postmaster, used his official position as BPM and secured hand loan of Rs. 4000/- from Mr.

Arockiasamy Albert which is against the rules and thus, he has failed to maintain absolute integrity and devotion to duty as mentioned under Rule 17 of EDA (Conduct & Service) Rules, 1964. The charge sheet was given to the Petitioner by the Respondent and not satisfying with the explanation given by the Petitioner, the Respondent appointed an Enquiry Officer to enquire into the charges framed against the Petitioner and the Enquiry Officer after enquiry, has come to the conclusion that charge No. 1 alone has been proved against the Petitioner and 2nd and 3rd charges have not been proved and he has given the findings to that effect and submitted the same before Disciplinary Authority. The ad-hoc Disciplinary Authority after going through the report given by the Enquiry Officer and on the basis of the report has imposed severe punishment of dismissal from service against the Petitioner. The Petitioner attacked the findings of the Enquiry Officer and also imposition of punishment given by the Disciplinary Authority on several grounds. The first contention of the Petitioner against the order passed by the Enquiry Officer is that even though the 2nd party is the prescribed appointing authority of the Petitioner, the Petitioner was appointed only by Senior Superintendent of Post Offices, Nagapattinam and therefore, the 2nd party is not competent to impose a major penalty against the Petitioner and he is incompetent to appoint Shri S. Selvarajan, Assistant Superintendent of Post Offices, Nagapattinam as Enquiry Officer and also to appoint the Presenting Officer and therefore, the entire enquiry proceedings were held to be illegal. When an authority subordinate to the authority cannot order removal or dismissal, it follows that the authority has no power to appoint Enquiry Officer or Presenting Officer and therefore, the punishment imposed by the Senior Superintendent of Post Offices, Thanjavur namely the ad-hoc Disciplinary Authority on the basis of the Enquiry Officer's report is illegal and *non est* in the eye of law.

9. But, as against this, the learned counsel for the Respondent contended that no doubt, the Superintendent of Post Offices, Nagapattinam is the appointing authority for the Petitioner. Senior Superintendent of Post Offices, Nagapattinam is the prescribed appointing authority for Branch Postmasters under Nagapattinam division. Hence, the 2nd party has power to appoint Enquiry Officer and Presenting Officer under Rule 8 major Disciplinary Cases as per letter No. 151/5/81-Vig. III dated 16-12-1981 of the Director General of Post Offices, New Delhi, and therefore, there should not be any objection, if the prescribed appointing authority issues charge sheet and also orders enquiry in major disciplinary cases for satisfying Article 311(1) of Constitution. Only if the penalty of dismissal or removal from service is not awarded to a EDA by an authority lower than the authority which is to be treated as the appointing authority for the purpose of this Article of Constitution, hence, the contention of the Petitioner

that the appointment of Enquiry Officer and Presenting Officer by the II Party/Management is not valid, has no force.

10. I find much force in the contention of the learned counsel for the Respondent because, there is no bar for the prescribed appointing authority to issue a charge sheet against the Petitioner or to appoint the Enquiry Officer and also Presenting Officer. As such, I find the contention of the learned counsel for the Petitioner in this regard is not valid.

11. The next contention of the learned counsel for the Petitioner against the enquiry conducted by the Enquiry Officer is that the Enquiry Officer notified that examination of witnesses on 18-11-88 but due to ill health, the Petitioner could not attend the enquiry on 18-11-88 and he has given prior intimation to the Enquiry Officer by means of telegram dated 17-11-88, which was received by the Enquiry Officer on the same day. Despite the receipt of telegram, the Enquiry Officer conducted the enquiry ex-parte on 18-11-88 and therefore, the enquiry conducted by the Enquiry Officer is not proper. Further, the Petitioner on 5-2-90 has submitted a list of 20 additional documents and also copies of documents which he relied for his defence. But the Enquiry Officer refused to call for these documents and therefore, no reasonable opportunity was given to the Petitioner to defend himself effectively in the enquiry and this amounts to denial of reasonable opportunity. Further, the Enquiry Officer has not allowed his defence representative Mr. P.S. Raman to inspect the statements and documents shown in Annexure III of the charge sheet and non-production of documents called for by him handicapped the Petitioner in effectively examining the prosecution witnesses produced by the Presenting Officer. But, the Enquiry Officer instead of acting reasonably or fairly has refused to call for them by substituting his own evidence which is arbitrary and illegal. Further, the II Party/Management while recovering the loss, has recovered interest and penal interest. The recovery of penal interest constitutes a punishment. Therefore, after levying penal interest, also imposing of punishment of dismissal amounts to double jeopardy and therefore, the order passed by the ad-hoc Disciplinary Authority is *ab initio* void besides illegal, arbitrary and in violation of principles of natural justice.

12. For this, the learned counsel for the Respondent contended that under the departmental rules, this will not amount to double jeopardy because recovery of loss from the official at fault along with penal interest, if any and proceeding against him departmentally for violation of departmental rules are two different matters. Learned counsel for the Respondent further contended that though the Petitioner's defence assistant has requested the Enquiry Officer on 5-2-90 to call for twenty additional

documents, the Enquiry Officer on reasonable and justifiable grounds rejected the contention of the Petitioner, since on 5-9-88 the Petitioner and his defence assistant had attended the enquiry and inspected all the listed documents, the copy of the listed documents were also supplied to him. Under such circumstances the Enquiry Officer felt that it was quite unnecessary to call for copies of listed documents against which had already been supplied during the inspection of the documents. Under such circumstances, it cannot be said that the request of the Petitioner was rejected by the Enquiry Officer unreasonably. Similarly, though the Petitioner and his defence assistant had attended the enquiry, they have refused to cross examine the witnesses on flimsy grounds and therefore, the Enquiry Officer has not permitted the defence representative after a long lapse of time to recall the witnesses produced by the Presenting Officer. Under such circumstances, it cannot be said that reasonable opportunity was not granted to the Petitioner and his defence representative. Therefore, there is no need to allow another perusal of documents and also another chance to cross examine the witnesses produced by the prosecution. In this case, the Petitioner unreasonably has not participated in the enquiry and has not cross examined the witnesses at the relevant time and he has prolonged the enquiry proceedings for several hearings and he has not submitted his representation also, even after sufficient time was granted to him twice. Therefore, it is clear that he wantonly protracted the proceedings and he wantonly refused to cross examine the witnesses at that time when chances were given to him and therefore, it cannot be said the Enquiry Officer has not given any reasonable opportunity to conduct the enquiry in a fair and proper way. Further, if the Enquiry Officer is biased as stated by the Petitioner, he would have concluded that all the three charges framed against him were proved. But, the Enquiry Officer concluded that except charge No. 1 all other charges framed against him were not proved. This clearly established that Enquiry Officer was fair in his duty and not biased as alleged by the Petitioner. Though the Petitioner alleged that he has not been given documents, which he has requested to the Enquiry Officer, it is clear that even prior to his submission of his explanation, he has wantonly requested some of the documents which are not relevant for the purpose of giving explanation. Further there is no practice of supplying copies of documents referred to in Annexure III alongwith memo of charges and therefore, the Enquiry Officer has rightly refused the same. Further, there is no provision under Rule 8 of the EDA (Conduct & Service) Rules, 1964 in supply of copies of documents along with the chargesheet. But during the course of enquiry, he was given full opportunity to defend the case and also to go through the evidence. Under such circumstances, it cannot be said that no fair opportunity was given to the Petitioner to conduct the case against him. Again, the learned counsel for the Respondent

contended that though the Petitioner has alleged that subsistence allowance was not given from the date of put off duty i.e. 18-12-86, as per EDA (C&S) Rules, as on 18-12-86, there was no provision for payment of subsistence allowance to be given to the person who has placed under put off duty. But, rule 9 of EDA (C&S) Rules, 1964 was now modified as per letter No. 19-36/95-ED/Trg. dated 1-8-99 of Director General of Posts, New Delhi and after that the subsistence allowances were paid to the EDAs who were placed under off duty and therefore the contention of the Petitioner that he has not been paid subsistence allowance and on that ground he was hampered to defend his case during the enquiry is not true. Though the Petitioner had already perused the original documents on 5-9-88 alongwith defence representative and received the copies of documents supplied to him, when the enquiry was in advanced stage, he has changed his defence representative and again he wanted his defence assistant to inspect the documents once again, which stage has already been passed during the enquiry and therefore, the Enquiry Officer did not permit the new defence representative for recalling the prosecution witnesses and after passing a reasonable order, he has refused the request of new defence assistant to recall the witnesses. Further, the enquiry was conducted as per rules and every reasonable opportunity was afforded to the Petitioner at every stage of enquiry and the Petitioner who as a EDA had committed multiple frauds to the tune of Rs. 1,768.55 and made substantial loss of public money and therefore, he cannot at this stage make complaint that the enquiry conducted against him was not proper. It is his further argument that the Petitioner who aggrieved with the order passed by the Disciplinary Authority has submitted his appeal to the Director of Postal Services and the Appellate Authority after due consideration has rejected his appeal. Again, the Petitioner submitted his review petition before the Chairman, Postal Services Board and it was also rejected by an order dated 10-8-2001 and therefore, from the records produced before this Tribunal, it is established that the enquiry held against the Petitioner was in a proper form and opportunity was given to the Petitioner at each and every stage. Under such circumstances, the claim filed by the Petitioner is not valid in law.

13. I find much force in the contention of the learned counsel for the Respondent because in this case, though the Petitioner alleged that he was not given reasonable opportunity to defend his case, from the records produced by the Respondent, it is clear that at each and every stage, opportunity was given to the Petitioner and though he has participated in the enquiry has not utilised the opportunity to defend his case, on the other hand, he wants to complain about the same before this forum. Further, even though at the first instance he has gone through the documents and also obtained copies of documents, again he has appointed a new defence assistant and again he wanted

the same copies of documents given to him. Under such circumstances, the request of the Petitioner has rightly been rejected by the Enquiry Officer. Under no stretch of imagination, it can be said that the enquiry conducted by the Enquiry Officer is vitiated by anything as alleged by the Petitioner. Under such circumstances, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner Union is entitled?

14. In view of my above finding that the appointment of Enquiry Officer and Presenting Officer by the II Party/Management is correct, I find the Petitioner is not entitled to any relief, No costs.

15. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd July, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For I Party/Workman :

Ex. No.	Date	Description
W1	18-11-88	Xerox copy of the medical certificate of Petitioner.
W2	25-06-90	Xerox copy of the letter from Respondent to Petitioner.
W3	01-02-91	Xerox copy of the letter from Respondent enclosing report of Enquiry Officer.
W4	19-02-91	Xerox copy of the letter granting extension of time to Petitioner.
W5	27-02-91	Xerox copy of the written submission submitted by Petitioner.
W6	30-03-91	Xerox copy of the appeal preferred by Petitioner.
W7	Nil	Xerox copy of the review petition preferred by Petitioner.
W8	23-12-93	Xerox copy of the judgment in C.C. No. 25/90.
W9	18-04-02	Xerox copy of the reply submitted by Respondent before LEO.
W10	12-08-02	Xerox copy of the rejoinder filed by Petitioner before LEO.
W11	09-12-02	Xerox copy of the additional counter filed by Respondent.

For II Party/Management :

Ex. No.	Date	Description
M1	28/30-3-88	Xerox copy of the memo issued to Petitioner.
M2	17-06-88	Xerox copy of the memo issued by Postmaster General, Chennai.
M3	10-05-88	Xerox copy of the memo of Senior Superintendent of Post Offices, Appointing Enquiry Officer.
M4	10-05-88	Xerox copy of the memo of Senior Superintendent of Post Offices, Appointing Presenting Officer.
M5	26-10-90	Xerox copy of the enquiry report.
M6	22-03-91	Xerox copy of the enquiry proceedings of ad-hoc Disciplinary Authority.
M7	20-12-91	Xerox copy of the memo issued by Director of Postal Services, Trichy.
M8	10-08-01	Xerox copy of the order of Member (P) Dak Bhavan, New Delhi.
M9	13-01-97	Xerox copy of the letter from Ministry of Communication, Deptt. of Post to all Chief Postmaster General.
M10	Nil	Xerox copy of the service rules for Postal ED staff.
M11	Nil	Xerox copy of the CCS (CCA) Rules, 1964.
M12	05-9-88	Xerox copy of the daily order sheet (7).
M13	28-09-88	Xerox copy of the daily order sheet (8).
M14	18-11-88	Xerox copy of the daily order sheet (9).
M15	27-12-88	Xerox copy of the daily order sheet (10).
M16	04-10-89	Xerox copy of the daily order sheet (12).
M17	14-04-88	Xerox copy of the letter of Petitioner to Senior Superintendent of Post Offices, Nagapattinam.
M18	21-04-88	Xerox copy of the letter of Senior Superintendent of Post Offices, Nagapattinam to the Petitioner.
M19	05-02-90	Xerox copy of the letter from Petitioner to Respondent.
M20	08-02-90	Xerox copy of the letter from Respondent to Petitioner.
M21	11-12-90	Xerox copy of the order of Central Administrative Tribunal in O.A. No. 381/89.

M22	10-12-86	Xerox copy of the statement of Petitioner before SDI(P) Karaikal.	M45	14-12-88	Xerox copy of the letter of Enquiry Officer to witnesses concerned.
M23	29-01-87	Xerox copy of the letter of Senior Superintendent of Post Offices, Nagapattinam to Postmaster, Nagapattinam.	M46	27-12-88	Xerox copy of the daily order sheet No. 10.
M24	02-06-87	Xerox copy of the office note of the Respondent.	M47	28-12-88	Xerox copy of the daily order sheet No. 11.
M25	14-07-88	Xerox copy of the letter from Senior Superintendent of Post Offices to Petitioner.	M48	21-02-89	Xerox copy of the letter from Senior Superintendent of Post Offices, Nagapattinam to Petitioner.
M26	14-07-88	Xerox copy of the daily order sheet No. 1.	M49	15-09-89	Xerox copy of the letter from Enquiry Officer to Petitioner.
M27	26-07-88	Xerox copy of the daily order sheet No. 2.	M50	04-10-89	Xerox copy of the daily order sheet No. 12.
M28	29-07-88	Xerox copy of the daily order sheet No. 3.	M51	25-10-89	Xerox copy of the letter from Enquiry Officer to witnesses.
M29	18-08-88	Xerox copy of the letter from Enquiry Officer to Petitioner.	M52	07-11-89	Xerox copy of the office note submitted by Enquiry Officer.
M30	18-08-88	Xerox copy of the daily order sheet No. 4.	M53	28-11-89	Xerox copy of the order passed by the Senior Superintendent of Post Offices, Nagapattinam.
M31	22-08-88	Xerox copy of the daily order sheet No. 5.	M54	07-02-90	Xerox copy of the letter from Enquiry Officer to Petitioner.
M32	29-08-88	Xerox copy of the savingram sent by the Enquiry Officer.	M55	23-02-90	Xerox copy of the daily order sheet No. 13.
M33	29-08-88	Xerox copy of the daily order sheet No. 6.	M56	23-02-90	Xerox copy of the daily order sheet No. 14.
M34	05-09-88	Xerox copy of the daily order sheet No. 7.	M57	28-02-90	Xerox copy of the letter from Enquiry Officer to Director of Postal Service Trichy.
M35	28-09-88	Xerox copy of the daily order sheet No. 8.	M58	28-02-90	Xerox copy of the letter from Enquiry Officer to Petitioner.
M36	18-10-88	Xerox copy of the letter from Enquiry Officer to Petitioner.	M59	28-03-90	Xerox copy of the daily order sheet No. 15.
M37	31-10-88	Xerox copy of the letter from Enquiry Officer to Petitioner.	M60	29-03-90	Xerox copy of the Notification given by Enquiry Officer for sitting.
M38	3-11-88	Xerox copy of the letter from Enquiry Officer to Petitioner.	M61	29-03-90	Xerox copy of the daily order sheet No. 16.
M39	16-11-88	Xerox copy of the telegram sent by Enquiry Officer to Petitioner.	M62	10-04-90	Xerox copy of the daily order sheet No. 16A.
M40	18-11-88	Xerox copy of the daily order sheet No. 9.	M63	13-07-90	Xerox copy of the savingram sent to Petitioner by Enquiry Officer.
M41	22-11-88	Xerox copy of the memo of Enquiry Officer to Petitioner.	M64	20-07-90	Xerox copy of the letter from Enquiry Officer to Petitioner.
M42	02-12-88	Xerox copy of the letter from Enquiry Officer to Petitioner.	M65	18-04-02	Xerox copy of the letter from Senior Superintendent of Post Offices to Petitioner.
M43	13-12-88	Xerox copy of the savingram sent by Enquiry Officer to Mr. P.S. Raman, Retd. Postmaster.	M66	22-04-03	Xerox copy of the order of Central Administrative Tribunal in OA No. 236/02.
M44	14-12-88	Xerox copy of the telegram sent by P.S. Raman to Enquiry Officer.	M67	05-11-03	Xerox copy of the letter from Postmaster General, Coimbatore to all SSPOs/SPOs.

नई दिल्ली, 31 अगस्त, 2004

का.आ. 2379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिफेन्स सर्विसेस् स्टाफ कॉलेज के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 68/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-8-2004 को प्राप्त हुआ था।

[सं. एल-14012/91/2002-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 68/2003) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Defence Services Staff College and their workman, which was received by the Central Government on 31-8-2004.

[No. L-14012/91/2002-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
CHENNAI**

Wednesday, the 21st July, 2004

PRESENT:

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE No. 68/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Defence Services Staff College and their workmen)

BETWEEN:

Sri A. Joseph Antony : I Party/Petitioner

AND

The Commandant, : II Party/Management
Defence Services Staff College,
Wellington,
Coonoor.

APPEARANCE:

For the Workman : Mr. X. Selvam Sounder
Advocate.

For the Management : Mr. K. Sivajothi, ACGSC

AWARD

The Central Government Ministry of Labour vide Order No. L-14012/91/2002-IR(DU) dated 08-04-2003 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the Commandant, Defence Services Staff College, Wellington in terminating the services of Shri A. Joseph Antony is justified? If not to what relief he is entitled?”

2. After the receipt of the reference, it was taken on file as I.D. No. 68/2003 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner entered into the service as a delivery boy on 19-6-95 and his duties were to deliver the goods after checking/verification. The articles of canteen will be supplied only to defence personnel on payment. While so, he was issued with suspension order dated 8-3-99 informing him that the disciplinary proceedings were contemplated against him. There was no charge mentioned and no explanation was called for. Then the Petitioner was advised to appear before Court of Enquiry on 24-3-99 and on that day, he was directed to tender his statement. Though the Petitioner was placed under suspension by orders of Respondent, the Petitioner was not paid with subsistence allowance for the period from April, 1999 to till date. Then the Respondent/Management has informed vide letter dated 27-2-2001 that the services of the Petitioner was terminated w.e.f. 1-9-99. There was no order of termination on the date as alleged by the Respondent/Management. The order of termination was not served upon the Petitioner till date. No charge sheet was issued to him and no enquiry was conducted and there was no evidence to allege the misconduct and no enquiry was conducted strictly as per law. Further, before imposing the punishment on the Petitioner, the Respondent/Management has not issued any show cause notice or called for his explanation. Therefore, the alleged termination order is illegal and the termination order was not served upon the Petitioner. The termination is against all cannons of justice and social & natural justice was denied. Hence, the Petitioner prays to direct the Respondent/Management to reinstate the Petitioner into service with continuity of service and other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that the Petitioner was employed at Defence Services Staff College canteen as a delivery boy on casual basis and paid a monthly emolument of Rs. 666

per month. Since misappropriation has taken place, the Petitioner was suspended on 8-3-99. There were other civilian temporary employees who were also suspended when misappropriation was noticed. The enquiry against the loss of misappropriation in the canteen was held as per disciplinary orders on the subject. The civilian employees were appointed only on casual roll basis and they have no right for any emoluments, increment, continuity of employment, P.F., family benefit scheme terminal benefits, pension including bonus etc. Though these were being given to the Petitioner, the Petitioner does not come under the definition 'workman' according to Industrial Disputes Act, 1947 and this Tribunal is not appropriate forum for claiming all the benefits. The Petitioner and other civilian employees were terminated from service, when loss in canteen was noticed. The Court of Enquiry was held as per procedure and rules in the Army. The enquiry against the loss and misappropriation in the canteen was held as per existing disciplinary orders on the subject. The Petitioner is not governed by either CCS Rules or Shops & Establishment Act of Tamil Nadu Govt. In a similar case, this Tribunal has dismissed the claim of one workman on the ground that the allegations against the Respondent College did not contain worthiness of complaint and lack of evidence to support the claim or relief. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the point for my consideration is —

“To what relief, the Petitioner is entitled?”

Point :

6. When the matter was taken up for enquiry, the Petitioner never appeared before this Tribunal and even after adjourning the case for several hearings, the Petitioner never turned up and there was no representation also on his behalf and therefore, the Petitioner was set ex-parte and Respondent's proof of affidavit was called for and the Respondent/Management filed the proof of affidavit. Along with the proof of affidavit, the Respondent filed seven documents which are marked as Ex. M1 to M7. Ex. M1 is the xerox copy of the proceedings of Court of Inquiry. Ex. M2 is the xerox copy of the certificate to the effect that the Unit run canteen is located within the Officers' Training Academy. Ex. M3 is the petition filed before the Labour Enforcement Officer, Coimbatore by the Petitioner. Ex. M4 is the xerox copy of the reply filed by the Respondent before the Regional Labour Commissioner (Central), Chennai. Ex. M5 is the xerox copy of the terms and conditions of service of canteen civilian staff. Ex. M6 is the xerox copy of the order of High Court in Writ Petition. Ex. M7 is the xerox copy of the proceedings of Court of Inquiry conducted at Respondent College at Wellington. In this case, the Petitioner filed the claim petition stating that he has been terminated from service without any legal basis.

But, he has not come before this Tribunal to substantiate his claim. The Respondent/Management contended that though he was terminated from service, it was under procedure laid down by Army and Civilian personnel are not entitled to claim any benefits under any labour law. But, the Petitioner has not come before this Tribunal to contradict this version of the Respondent/Management. Since the burden is upon the Petitioner to prove before this Tribunal that the termination of his service is illegal and against the provisions of Labour Law and since the Petitioner has not established this fact before this Tribunal, I find this claim petition is liable to be dismissed. As such, I find this point against the Petitioner.

7. In view of my above finding that the petitioner has not established his contention before this Tribunal, I find the Petitioner is not entitled to any relief. No Costs.

8. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st July, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For the I Party/Workman : Nil

For the II Party/Management :

Ex. No.	Date	Description
M1	30-07-01	Xerox copy of the proceedings of Court of Inquiry.
M2	04-10-99	Xerox copy of the certificate produced by Respondent.
M3	25-10-02	Xerox copy of the 2A petition filed by Petitioner.
M4	20-11-02	Xerox copy of the reply submitted by Respondent.
M5	Nil	Xerox copy of the terms & conditions of service of Canteen Civilian Staff.
M6	30-07-01	Xerox copy of the order of High Court of Madras.
M7	Nil	Xerox copy of the proceedings of Court of Inquiry.

नई दिल्ली, 31 अगस्त, 2004

का.आ. 2380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिफेन्स सर्विसेस् स्टॉफ कॉलेज के प्रबंधन के संबद्ध नियोजकों और उनके

कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 67/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-8-2004 को प्राप्त हुआ था।

[सं. एल-14012/90/2002-आई.आर.(डी.यू.)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 67/2003) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Defence Services Staff College and their workman, which was received by the Central Government on 31-8-2004.

[No. L-14012/90/2002-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 21th July, 2004

PRESENT:

K. JAYARAMAN, Presiding Officer
INDUSTRIAL DISPUTE NO. 67/2003

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Defence Services Staff College and their workman.

BETWEEN:

Smt. Sheela Joseph : I Party/Petitioner

AND

The Commandant,
Defence Services Staff College,
Wellington,
Coonoor. : II Party/Management

APPEARANCES:

For the Workman : Mr. X. Selvam Sounder,
Advocates

For the Management : Mr. K. Sivajothi, ACGSC

AWARD

The Central Government Ministry of Labour vide Order No. L-14012/90/2002-IR(DU) dated 08-04-2003 has

referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the Commandant, Defence Services Staff College, Wellington in terminating the services of Smt. Sheela Joseph is justified? If not to what relief she is entitled?”

2. After the receipt of the reference, it was taken on file as I.D. No. 67/2003 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner entered into the service as an Accountant on 19-3-82 and she was taking care all accounting functions in the Respondent/Management. The Articles of canteen will be supplied only to defence personnel on payment. While so, she was issued with suspension order dated 8-3-99 informing that the disciplinary proceeding are contemplated against her. There was no charge mentioned and no explanation was called for. Then the Petitioner was advised to appear before Court of Enquiry on 24-3-99 and on that day she was directed to tender her statement. Though the Petitioner was placed under suspension by orders of Respondent, the Petitioner was not paid with subsistence allowance for the period from April, 1999 to till date. Then the Respondent/Management has informed vide letter dated 27-2-2001 that the services of the Petitioner was terminated w.e.f. 1-9-99. There was no order of termination on the date as alleged by the Respondent/Management. The order of termination was not served upon the Petitioner till date. No chargesheet was issued to her and no enquiry was conducted and there was no evidence to allege the misconduct and no enquiry was conducted strictly as per law. Further, before imposing the punishment on the Petitioner, the Respondent/Management has not issued any show cause notice or called for her explanation. Therefore, the alleged termination order is illegal and the termination order was not served upon the Petitioner. The termination is against all canons of justice and social and natural justice was denied. Hence, the Petitioner prays to direct the Respondent/Management to reinstate the Petitioner into service with continuity of service and other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that the Petitioner was employed at Defence Services Staff College canteen as an Accountant on casual basis and paid a monthly emolument of Rs. 2,546/- per month. Since misappropriation has taken place, the Petitioner was suspended on 8-3-99. There were other civilian temporary employees who were also

suspended when misappropriation was noticed. The enquiry against the loss of misappropriation in the canteen was held as per disciplinary orders on the subject. The civilian employees were appointed only on casual roll basis and they have no right for any emoluments, increment, continuity of employment, P.F. family benefit scheme terminal benefits, pension including bonus etc. Though these were being given to the Petitioner, the Petitioner does not come under the definition 'workman' according to Industrial Disputes Act, 1947 and this Tribunal is not appropriate forum for claiming all the benefits. The Petitioner and other civilian employees were terminated from service, when loss in canteen was noticed. The Court of Enquiry was held as per procedure and rules in the Army. The enquiry against the loss and misappropriation in the canteen was held as per existing disciplinary orders on the subject. The Petitioner is not governed by either CCS Rules or Shops and Establishment Act Tamil Nadu Govt. In a similar case, this Tribunal has dismissed the claim of one workman on the ground that the allegations against the Respondent College did not contain worthiness of complaint and lack of evidence to support the claim or relief. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the point for my consideration is —

"To what relief, the Petitioner is entitled?"

Point :—

6. When the matter was taken up for enquiry, the Petitioner never appeared before this Tribunal and even after adjourning the case for several hearings, the Petitioner never turned up and there was no representation also on her behalf and therefore, the Petitioner was set ex-parte and Respondent's proof of affidavit was called for and the Respondent/Management filed the proof of affidavit. Along with the proof of affidavit, the Respondent filed seven documents which are marked as Ex. M1 to M7. Ex. M1 is the xerox copy of the proceedings of Court of Inquiry. Ex. M2 is the xerox copy of the certificate to the effect that the Unit run canteen is located within the Officers' Training Academy. Ex. M3 is the petition filed before the Labour Enforcement Officer, Coimbatore by the Petitioner. Ex. M4 is the xerox copy of the reply filed by the Respondent before the Regional Labour Commissioner (Central), Chennai. Ex. M5 is the xerox copy of the terms and conditions of service of canteen civilian staff. Ex. M6 is the xerox copy of the order of High Court in writ Petition. Ex. M7 is the xerox copy of the proceedings of Court of Inquiry conducted at Respondent College at Wellington. In this case, the Petitioner filed the claim petition stating that she has been terminated from service without any legal basis. But, she has not come before this Tribunal to substantiate her claim. The Respondent/Management

contended that though she was terminated from service, it was under procedure laid down by Army and Civilian personnel are not entitled to claim any benefits under any labour law. But, the Petitioner has not come before this Tribunal to contradict this version of the Respondent/Management. Since the burden is upon the Petitioner to prove before this Tribunal that the termination of her service is illegal and against the provisions of Labour Law and since the Petitioner has not established this fact before this Tribunal, I find this claim petition is liable to be dismissed. As such, I find this point against the Petitioner.

7. In view of my above finding that the Petitioner has not established has contention before this Tribunal, I find the Petitioner is not entitled to any relief. No Costs.

8. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st July, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For the I Party/Workman : Nil

For the II Party/Management :—

Ex. No.	Date	Description
M1	30-07-01	Xerox copy of the proceedings of Court of Inquiry.
M2	04-10-99	Xerox copy of the certificate produced by Respondent.
M3	25-10-02	Xerox copy of the 2A petition filed by Petitioner.
M4	20-11-02	Xerox copy of the reply submitted by Respondent.
M5	Nil	Xerox copy of the terms & conditions of service of Canteen Civilian Staff.
M6	30-07-01	Xerox copy of the order of High Court of Madras.
M7	Nil	Xerox copy of the proceedings of Court of Inquiry.

नई दिल्ली, 31 अगस्त, 2004

का.आ. 2381.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिफेंस सर्विसेस् स्टाफ कॉलेज के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 66/2003)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-8-2004 को प्राप्त हुआ था।

[सं. एल-14012/92/2002-आई.आर.(डी.यू.)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2381.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 66/2003) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Defence Service Staff College and their workman, which was received by the Central Government on 31-8-2004.

[No. L-14012/92/2002-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
CHENNAI**

Wednesday, the 21st July, 2004

PRESENT:

K. JAYARAMAN,
Presiding Officer

INDUSTRIAL DISPUTE NO. 66/2003

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Defence Service Staff College and their workmen.]

BETWEEN:

Smt. Padmavathy : I Party/Petitioner

AND

The Commandant, : II Party/Management
Defence Service Staff College,
Wellington,
Coimoor.

APPEARANCE:

For the Workman : Mr. X. Selvam Sounder
Advocate

For the Management : Mr. K. Sivajothi, ACGSC

AWARD

The Central Government Ministry of Labour vide Order No.L-14012/92/2002-IR(DU) dated 08-04-2003 has

referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the Commandant, Defence Services Staff College, Wellington in terminating the services of Smt. Padmavathy is justified? If not to what relief she is entitled?”

2. After the receipt of the reference, it was taken on file as I.D. No. 66/2003 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner entered into the service as sales girl-cum-clerk-cum-bill clerk on 01-07-84 and she was to raise bills for articles taken/supplied to customers in the Respondent/Management. The articles of canteen will be supplied only to defence personnel on payment. While so, she was issued with suspension order dated 8-3-99 informing that the disciplinary proceeding are contemplated against her. There was no charge mentioned and no explanation was called for. Then the Petitioner was advised to appear before Court of Enquiry on 24-3-99 and on that day she was directed to tender her statement. Though the Petitioner was placed under suspension by orders of Respondent, the Petitioner was not paid with subsistence allowance for the period from April, 1999 to till date. Then the Respondent/Management has informed vide letter dated 27-2-2001 that the services of the Petitioner was terminated w.e.f. 1-9-99. There was no order of termination on the date as alleged by the Respondent/Management. The order of termination was not served upon the Petitioner till date. No charge sheet was issued to her and no enquiry was conducted and there was no evidence to allege the misconduct and no enquiry was conducted strictly as per law. Further, before imposing the punishment on the Petitioner, the Respondent/Management has not issued any show cause notice or called for her explanation. Therefore, the alleged termination order is illegal and the termination order was not served upon the Petitioner. The termination is against all canons of justice and social & natural justice was denied. Hence, the Petitioner prays to direct the Respondent/Management to reinstate the Petitioner into service with continuity of service and other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that the Petitioner was employed at Defence Services Staff College canteen as a sales girl-cum-clerk-cum-bill clerk on casual basis and paid a monthly emolument of Rs. 1400/- per month. Since misappropriation has taken place, the Petitioner was suspended on 8-3-99. There were other civilian temporary employees who were also suspended when

misappropriation was noticed. The enquiry against the loss of misappropriation in the canteen was held as per disciplinary orders on the subject. The civilian employees were appointed only on casual roll basis and they have no right for any emoluments, increment, continuity of employment, P.F. family benefit scheme terminal benefits, pension including bonus etc. Though these were being given to the Petitioner, the Petitioner does not come under the definition 'workman' according to Industrial Disputes Act, 1947 and this Tribunal is not appropriate forum for claiming all the benefits. The Petitioner and other civilian employees were terminated from service, when loss in canteen was noticed. The Court of Enquiry was held as per procedure and rules in the Army. The enquiry against the loss and misappropriation in the canteen was held as per existing disciplinary orders on the subject. The Petitioner is not governed by either CCS Rules or Shops & Establishment Act Tamil Nadu Govt. In a similar case, this Tribunal has dismissed the claim of one workman on the ground that the allegations against the Respondent College did not worthiness of complaint and lack of evidence to support the claim or relief. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the point for my consideration is —

"To what relief, the Petitioner is entitled?"

Point :—

6. When the matter was taken up for enquiry, the Petitioner never appeared before this Tribunal and even after adjourning the case for several hearings, the Petitioner never turned up and there was no representation also on her behalf and therefore, the Petitioner was set ex-parte and Respondent's proof of affidavit was called for and the Respondent/Management filed the proof of affidavit. Along with the proof of affidavit, the Respondent filed seven documents which are marked as Ex. M1 to M7. Ex. M1 is the xerox copy of the proceedings of Court of Inquiry. Ex. M2 is the xerox copy of the certificate to the effect that the Unit run canteen is located within the Officers' Training Academy. Ex. M3 is the petition filed before the Labour Enforcement Officer, Coimbatore by the Petitioner. Ex. M4 is the xerox copy of the reply filed by the Respondent before the Regional Labour Commissioner (Central), Chennai. Ex. M5 is the xerox copy of the terms and conditions of service of canteen civilian staff. Ex. M6 is the xerox copy of the order of High Court in writ Petition. Ex. M7 is the xerox copy of the proceedings of Court of Inquiry conducted at Respondent College at Wellington. In this case, the Petitioner filed the claim petition stating that she

has been terminated from service without any legal basis. But, she has not come before this Tribunal to substantiate her claim. The Respondent/Management contended that though she was terminated from service, it was under procedure laid down by Army and Civilian personnel are not entitled to claim any benefits under any labour law. But, the Petitioner has not come before this Tribunal to contradict this version of the Respondent/Management. Since the burden is upon the Petitioner to prove before this Tribunal that the termination of his service is illegal and against the provisions of Labour Law and since the Petitioner has not established this fact before this Tribunal, I find this claim petition is liable to be dismissed. As such, I find this point against the Petitioner.

7. In view of my above finding that the Petitioner has not established his contention before this Tribunal, I find the Petitioner is not entitled to any relief. No Costs.

8. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st July, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For the I Party/Workman : Nil

For the II Party/Management :—

Ex. No.	Date	Description
M1	30-07-01	Xerox copy of the proceedings of Court of Inquiry.
M2	04-10-99	Xerox copy of the certificate produced by Respondent.
M3	25-10-02	Xerox copy of the 2A petition filed by Petitioner.
M4	20-11-02	Xerox copy of the reply submitted by Respondent.
M5	Nil	Xerox copy of the terms and conditions of service of Canteen Civilian Staff
M6	30-07-01	Xerox copy of the order of High Court of Madras.
M7	Nil	Xerox copy of the proceedings of Court of Inquiry.

नई दिल्ली, 31 अगस्त, 2004

का. अ. 2382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिसों के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 125/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-8-2004 को प्राप्त हुआ था।

[सं० एल-40012/96/2003-आई.आर. (डी. यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2382.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 125/2003) of the Central Government Industrial Tribunal/Labour Court Chennai Now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Senior Superintendent of Post Offices and their workman, which was received by the Central Government on 31-8-2004.

[No. L-40012/96/2003-IR (DU)]

KULDIPRAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 14th July, 2004

PRESENT: K. JAYARAMAN,

Presiding Officer

INDUSTRIAL DISPUTE NO. 125/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947); between the Management of The Senior Superintendent of Post Offices, Thanjavur Division and their workman).

BETWEEN

Sri K. Ganesan : I Party/Petitioner

AND

The Senior Superintendent : II Party/Management
of Post Offices,
Thanjavur Division,
Thanjavur

APPEARANCE:

For the Workman : M/s. S. Jothivani & A. Lakshmi
Advocate.

For the Management : M/s. K. Sambasivam, ASGC
J. Venkatesan, Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L-40012/96/2003-IR(DU) dated 29-7-2003 has

referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the management of Senior Superintendent of Post Offices, Thanjavur, Department of Posts, in terminating the services of Sri K. Ganesan without paying compensation is just and legal? If not, to what relief the workman is entitled?”

2. After the receipt of the reference, it was taken on file as I.D. No. 125/2003 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner is a XII std. qualified person and is having independent source of income and is an eligible candidate to hold the post of Extra Departmental Agent in the II Party/Management. The Petitioner had served as EDDA at Nallur branch post office w.e.f. 20-8-01 to 8-10-01 for yearly 50 days. Further, he had served as EDDA at Mela Vidyal Ram Nagar branch w.e.f. 9-10-01 to 17-07-02 for about 332 days. The Petitioner was disbursed pay and allowances by the II Party/Management on regular establishment bills and hence it cannot be said that he was appointed on stop gap arrangement. Even for appointment of temporary EDDA, procedures have been laid down and as per the provisions and schedule prescribed either the Inspector of Post Offices or Assistant Superintendent of Post Offices is the appointing authority for EDDA (Gramin Dak Sevaks Mail Deliverer) and the prescribed appointing authority cannot delegate his power to the Branch Postmaster. As such, the appointment and service rendered by the Petitioner is made only with the knowledge and approval of appointing authority. Thus, the Petitioner had worked more than 240 days in a continuous period of 12 months and as such, his appointment is in order. While he was serving in the Branch Post Master, Melavidyal Ram Nagar branch office, under the compulsion of the II Party/Management he has given an undertaking stating that his appointment is only temporary and he will not claim permanent post. This undertaking was made under compulsion and threat and he tendered his willingness for taking the job which itself shows the unfair labour practice exercised by the II Party/Management. Since he has served continuously without any break whatsoever in a regular vacancy for more than 240 days in a continuous period of 12 months, the protection given under section 25F of the Industrial Disputes Act, 1947 is applicable to the Petitioner and therefore, he is entitled for notice before termination as enshrined under section 25F of the Industrial Disputes Act, 1947. Therefore, the termination order passed is violative of Section 25F of Industrial Disputes Act, 1947 and non-est before the eye of law. The order passed by the appointing authority is illegal, arbitrary and in violation of

principles of natural justice. Hence, he prays that an award may be passed in his favour directing the Respondent to reinstate him into service as EDDA with all attendant benefits.

4. As against this, the II Party/Management contended that the Respondent has neither engaged the Petitioner nor terminated him at any point of time. Even for regular/provisional appointment, the appointing authority is Assistant Superintendent of Post Offices of concerned division. Hence, the claim against the II Party/management is neither maintainable in law or on facts. The Petitioner was engaged on his request in the post for GDS MD, Nallur B.O. and GDS MD in M.R. Nagar B.O. in few short spells in the vacancy arose in the concerned division due to transfer of regular incumbents. Therefore, till the vacancies are filled on regular basis, the I Party was engaged as EDDA on stopgap basis to render the postal service in the remote villages uninterruptedly. Mere drawal of payment through establishment pay bills, will not confer any right on the Petitioner as claimed by him. Even for provisional appointment, there are certain prescribed procedures laid down by the department, The Petitioner was engaged by branch postmaster on his request to provide a job to him on temporary/stopgap arrangement and with an assurance that he will not claim appointment on regular basis. Therefore, the engagement of Petitioner is only a stopgap arrangement. No regular appointment order was issued by the appointing authority. The Petitioner has accepted this stopgap arrangement and therefore, he cannot claim any benefits. Further, even the regular EDA/GDS itself is a part time job. In this case, the workload in Nallur branch and M.R. Nagar is 3 hours 7 minutes and 2 hours 16 minutes respectively. The allegation that undertaking was given under compulsion of II Party/Management and as per the dictum of appointing authority is baseless, motivated and concocted and only made as an afterthought. The Petitioner was not appointed on regular basis and was only appointed as a stopgap arrangement and he worked only in short spells, hence the issue notice before termination does not arise. There is no illegality in discharge of the Petitioner from stopgap arrangement. Hence, for all these reasons, the Respondent prays the claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are—

- (i) "Whether the action of the II Party/Management in terminating the services of Petitioner without paying compensation is just and legal?"
- (ii) "To what relief, the Petitioner is entitled?"

Point No. 1 :—

6. In this case, the Petitioner's contention is that he has been appointed as Extra Departmental Delivery Agent in the II Party/Management namely postal department firstly in Nallur branch post office from 20-08-2001 to

8-10-2001 and subsequently in Mela Vidyal Ram Nagar branch with effect from 09-10-2001 to 17-07-2002 and thus, he has worked more than 240 days in a continuous period of 12 months and therefore, he is entitled to the benefits of Industrial Disputes Act, 1947 and all of a sudden the termination was made by Respondent/Management on 18-07-2002 which is against the provisions of Industrial Disputes Act, 1947 and also against the provisions of Service Rules of Postal E.D. Staff and therefore, it is illegal, arbitrary exercise of power and also in violation of principles of natural justice and he therefore, prays for reinstatement.

7. As against this, the II Party/Management has accepted that the Petitioner has worked from 20-8-2001 to 17-07-2002, but contended that his appointment is not according to the rules and he was appointed only on temporary/stopgap arrangement with an assurance that he will not claim any appointment on regular basis. Further, as per the procedure of the postal department, even the temporary appointment should be made as per the regulations. But, in this case, the Petitioner was not appointed as per the rules and regulations. He was appointed only as a stopgap arrangement by the Branch Post Master, who is not the appointing authority for Extra Departmental Agents and as such, the Petitioner cannot claim any benefits under law and order of termination given by the authority is legal and binding on the Petitioner.

8. To substantiate his claim, the Petitioner examined himself as WW1 and marked five documents namely Ex. W1 to W5. Ex. W1 is the service certificate issued by Branch Postmaster, Nallur branch dated 11-9-2001. Ex. W2 is the copy of letter intimating the appointment of the Petitioner in Mela Vidyal Ram Nagar branch. Ex. W3 is the copy of representation submitted by Petitioner after his termination dated 31-07-2002 and Ex. W4 is the order of rejection given by the Respondent/Management. Further, the Petitioner has also filed a reply, which was filed by the Respondent/Management before Assistant Labour Commissioner (Central) which is marked as Ex. W5. As against this, no witness was examined on the side of the Respondent and no document was marked.

9. The main contention of the Petitioner is that he has studied upto XII standard and he is having independent source of income and therefore, he is eligible for the post of Extra Departmental Agent in the II Party/Management and he was appointed as Extra Departmental Delivery Agent at Nallur branch, which is attached to Sundaraperumal Koil Sub Office from 20-8-2001 to 8-10-2001. Subsequently, he served as Extra Departmental Delivery Agent at Mela Vidyal Ram Nagar branch which attached to Valangaiman Sub Office from 9-10-2001 to 17-07-2002. Thus, he has served more than 332 days continuously in a regular vacancy and therefore, it cannot be termed as a stopgap arrangement as contended by the

II Party/Management. On behalf of the Petitioner, it was further contended that under Extra Departmental Agents Conduct & Service Rules, Rule 8-termination of service in which it says—

“the service of an employee who has not already rendered more than three years of continuous service from the date of appointment shall be liable to termination at any time by a notice in writing given either by employee to appointing authority or by appointing authority to the employee.”

(b) *“the period of such notice shall be one month; provided, that service of any such employee may be terminated forthwith and on such termination the employee shall be entitled to claim a sum equivalent to the amount of his basis allowance plus Dearness Allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his services.”*

In this case, the Petitioner has not served more than three years and therefore, the department has to issue one month's notice prior to his termination. Even assuming for argument sake that the Petitioner cannot claim benefits under any other labour legislations, even according to EDA Conduct & Service Rules, one month's notice prior to termination should be given to the Petitioner. But, the Respondent has not contended that they have issued this notice to the Petitioner or paid one month's salary before his termination and therefore, the order passed by the II Party/Management is illegal and arbitrary. Further, the learned counsel for the Petitioner argued that the Petitioner has served in the Respondent/Management for more than 332 days and therefore, the Petitioner's termination is illegal under section 25F of the Industrial disputes Act, 1947 because the Petitioner has served more than 240 days in a continuous period of 12 months and therefore, he is entitled to the benefits of Industrial Disputes Act.

10. But, as against this, the learned counsel for the Respondent contended that according to the rules of the Postal department, even the temporary appointment should be made as per rules. Further, the appointing authority for Extra Departmental Delivery Agents is Inspector of Post Offices/Assistant Superintendent of Post Offices. But in this case, the Petitioner was engaged on his request to work in the post of Extra Departmental Agent for delivery in the post of GDS MD, Nallur branch office and GDS MD, MR Nagar Branch office in few short spells in the vacancy arises in the concern Division, due to transfer of regular incumbents and till the vacancy is filled on regular basis, the Petitioner was engaged as Extra Departmental Delivery Agent on stopgap basis to render the postal services in remote villages uninterruptedly. Since his appointment was not a regular and since the appointment was not made as per rules and regulations, the Petitioner cannot claim any benefits under any labour legislations. Further, his

engagement was only on stopgap basis and since it is a part time work and since he has not worked for 480 days as per Industrial Disputes Act, 1947, no notice of termination and no compensation will arise and therefore, he is not entitled to claim any benefits.

11. But, again the learned counsel for the Petitioner argued that though it is contended that the appointing authority vide Rule 4 and Schedule prescribes either Inspector of Post Offices or Assistant Superintendent of Post Offices is the appointing authority for Extra Departmental Delivery Agents (Gramin Dak Sevak Mail Deliverer), it is well established that the prescribed appointing authority cannot delegate his power to any person much less Branch Postmaster and therefore, the appointment and service rendered by the Petitioner is made only with the knowledge and approval of the appointing authority, namely the Assistant Superintendent of Post Offices in this case. Since the appointing authority, namely the assistant Superintendent of Post Offices cannot deny the appointment of Petitioner, as appointment made on stopgap arrangement by the Branch Post Master himself and since the Petitioner worked for more than 240 days in a continuous period of 12 months, the appointment should be considered as in order and therefore, the contentions that the Petitioner's appointment is a stopgap arrangement and he cannot claim any benefits are made only for the purpose of this case and there is no legal sanction for the same.

12. I find much force in the contention of the learned counsel for the Petitioner because, even as per Rule 8 of the Extra Departmental Agents (Conduct & Service) rules, the service of an employee who has not already rendered more than three years of continuous service from the date of appointment shall be liable to termination at any time by a notice in writing given either by employee to appointing authority or by appointing authority to the employee and therefore, the termination order given by the appointing authority in this case against the Petitioner is not valid and it is against the provisions of rules. As such, I find the termination order passed by the Respondent/Management is not valid in law. As such, I find this point against the Respondent.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled ?

13. In view of my foregoing findings that the termination notice issued by the Respondent is not valid, I find the Petitioner is to be reinstated as Extra Departmental Agent. In view of the fact the Extra Departmental agent is only a part time job, I find the Petitioner is not entitled to any backwages. Therefore, I direct the Respondent/Management to reinstate the Petitioner into service within one month from the date of receipt of this Award. No Costs.

14. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 14th July, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the I Party/Workman : WW1 Sri K. Ganesan

For II Part/Management : None

Documents Marked :—

For the I Party/Workman :—

Ex. No. Date Description

W1 11-09-01 Xerox copy of the service certificate issued by BPM, Nallur branch.

W2 09-10-01 Xerox copy of the letter from BPM, Nallur to Assistant Superintendent of Post offices regarding appointment of Petitioner.

W3 31-07-02 Xerox copy of the representation of Petitioner.

W4 03-09-02 Xerox copy of the order of rejection

W5 25-01-03 Xerox copy of the reply filed by Respondent before conciliation officer.

For the II Party/Management :— Nil

नई दिल्ली, 31 अगस्त, 2004

का. आ. 2383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिफेन्स सर्विसेस स्टाफ कॉलेज के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 65/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-8-2004 को प्राप्त हुआ था।

[सं० एल-14012/93/2002-आई.आर. (डी. यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/2003) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Defence Services Staff College and their workman, which was received by the Central Government on 31-8-2004.

[No. L-14012/93/2002-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 21st July, 2004

PRESENT:

K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 65/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Defence Services Staff College and their workman)

BETWEEN

Sri T.F. John : I Party/Petitioner

AND

The Commandant, : II Party/Management
Defence Services
Staff College, Wellington,
Coonoor.

APPEARANCE:

For the Workman : Mr. X.Selvam Sounder
Advocate.

For the Management : M/s. K. Sivajothi, ACGSC.

AWARD

The Central Government, Ministry of Labour vide Order No. L-14012/93/2002-IR(DU) dated 8-4-2003 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the Commandant, Defence Services Staff College, Wellington in terminating the services of Shri T.F. John is justified? If not, to what relief he is entitled?”

2. After the receipt of the reference, it was taken on file as I.D. No. 65/2003 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner entered into the service as a delivery boy on 19-1-98 and his duties were to deliver the goods after checking/verification. The articles of canteen will be supplied only to defence personnel on payment. While so, he was issued with suspension order dated 8-3-99 informing him that the disciplinary proceedings were contemplated against him. There was no charge mentioned and no explanation was called for. Then the Petitioner was advised to appear before Court of Enquiry on 24-3-99 and on that day, he was directed to tender his statement. Though the Petitioner was placed under suspension by orders of Respondent, the Petitioner was not paid with subsistence allowance for the period from April, 1999 to till date. Then the Respondent/Management has informed vide letter dated 27-2-2001 that the services of the Petitioner was terminated w.e.f. 1-9-99. There was no order of termination on the date as alleged by the Respondent/Management. The order of termination was not served upon the Petitioner till date. No charge sheet was issued to him and no enquiry was conducted and there was no evidence to allege the

misconduct and no enquiry was conducted strictly as per law. Further, before imposing the punishment on the Petitioner, the Respondent/Management has not issued any show cause notice or called for his explanation. Therefore, the alleged termination order is illegal and the termination order was not served upon the Petitioner. The termination is against all cannons of justice and social & natural justice was denied. Hence, the Petitioner prays to direct the Respondent/Management to reinstate the Petitioner into service with continuity of service and other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that the Petitioner was employed at Defence Services Staff College canteen as a delivery boy on casual basis and paid a monthly emolument of Rs. 650 per month. Since misappropriation has taken place, the Petitioner was suspended on 8-3-99. There were other civilian temporary employees who were also suspended when misappropriation was noticed. The enquiry against the loss of misappropriation in the canteen was held as per disciplinary orders on the subject. The civilian employees were appointed only on casual roll basis and they have no right for any emoluments, increment, continuity of employment, P.F., family benefit scheme terminal benefits, pension including bonus etc. Though these were being given to the Petitioner, the Petitioner does not come under the definition 'workman' according to Industrial Disputes Act, 1947 and this Tribunal is not appropriate forum for claiming all the benefits. The Petitioner and other civilian employees were terminated from service, when loss in canteen was noticed. The Court of Enquiry was held as per procedure and rules in the Army. The enquiry against the loss and misappropriation in the canteen was held as per existing disciplinary orders on the subject. The Petitioner is not governed by either CCS Rules or Shops & Establishment Act of Tamil Nadu Govt. In a similar case, this Tribunal has dismissed the claim of one workman on the ground that the allegations against the Respondent College did not contain worthiness of complaint and lack of evidence to support the claim or relief. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the point for my consideration is—

"To what relief, the Petitioner is entitled?"

Point :—

6. When the matter was taken up for enquiry, the Petitioner never appeared before this Tribunal and even after adjourning the case for several hearings, the Petitioner never turned up and there was no representation also on his behalf and therefore, the Petitioner was set ex-parte and Respondent's proof of affidavit was called for and the Respondent/Management filed the proof of affidavit. Along with the proof of affidavit, the Respondent filed seven documents which are marked as Ex. M1 to M7. Ex. M1 is

the xerox copy of the proceedings of Court of Inquiry. Ex. M2 is the xerox copy of the certificate to the effect that the Unit run canteen is located within the Officers' Training Academy. Ex. M3 is the petition filed before the Labour Enforcement Officer, Coimbatore by the Petitioner. Ex. M4 is the xerox copy of the reply filed by the Respondent before the Regional Labour Commissioner (Central), Chennai. Ex. M5 is the xerox copy of the terms and conditions of service of canteen civilian staff. Ex. M6 is the xerox copy of the order of High Court in Writ Petition. Ex. M7 is the xerox copy of the proceedings of Court of Inquiry conducted at Respondent College at Wellington. In this case, the Petitioner filed the claim petition stating that he has been terminated from service without any legal basis. But, he has not come before the Tribunal to substantiate his claim. The Respondent/Management contended that though he was terminated from service, it was under procedure laid down by Army and civilian personnel are not entitled to claim any benefits under any labour law. But, the Petitioner has not come before this Tribunal to contradict this version of the Respondent/Management. Since the burden is upon the Petitioner to prove before this Tribunal that the termination of his service is illegal and against the provisions of Labour Law and since the Petitioner has not established this fact before this Tribunal, I find this claim petition is liable to be dismissed. As such, I find this point against the Petitioner.

7. In view of my above finding that the Petitioner has not established his contention before this Tribunal, I find the Petitioner is not entitled to any relief. No Costs.

8. Thus, the reference is disposed of accordingly. (Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st July, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For the I Party/Workman : Nil

For the II Party/Management :—

Ex. No.	Date	Description
M1	30-07-01	Xerox copy of the proceedings of Court of Inquiry.
M2	04-10-99	Xerox copy of the certificate produced by Respondent.
M3	25-10-02	Xerox copy of the 2A petition filed by Petitioner.
M4	20-11-02	Xerox copy of the reply submitted by Respondent
M5	Nil	Xerox copy of the terms & conditions of service of Canteen Civilian Staff.
M6	30-07-01	Xerox copy of the order of High Court of Madras.

M7 Nil Xerox copy of the proceedings of Court of Inquiry.

नई दिल्ली, 31 अगस्त, 2004

का. आ. 2384.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पोस्ट मास्टर जनरल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 61/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-8-2004 को प्राप्त हुआ था।

[सं० एल-40012/232/2002-आई.आर. (डी. यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/2003) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Post Master General and their workmen, which was received by the Central Government on 31-8-2004.

[No. L-40012/232/2002-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 22nd July, 2004

PRESENT: K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 61/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of the Post Master General, Western Region and their workman)

BETWEEN

Sri Kondappa Naickar : I Party/Petitioner

AND

The Post Master General, : II Party/Management
Western Region,
Coimbatore

APPEARANCE:

For the Workman : M/s. S. Jothivani,
Advocates

For the Management : M/s. K. Sivajothi, ACGSC

AWARD

The Central Government, Ministry of Labour vide Order No. L-40012/232/2002-IR(DU) dated 28/3-3-2003 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the Post Master General, Coimbatore in terminating the service of Sri P. Kondappa Naickar is justified? If not, to what relief he is entitled?”

2. After the receipt of the reference, it was taken on file as I.D. No. 61/2003 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was working as EDBPM at Akkarapalayam branch office attached to Vccrapandi in Salem West Division. While so, he was placed under put off duty by an order dated 1-10-90 by the Assistant Superintendent of Post Offices, Salem South Sub Division, and it was also ratified by the Senior Superintendent of Post Offices, Salem East Division. Subsequently, the services of the Petitioner were terminated under Rule 6 of EDA (C&S) Rules, 1964. The Petitioner preferred an appeal before the Respondent and by an order dated 10-1-1992, the Respondent set aside the punishment of termination of services imposed on the Petitioner and further ordered that the said order does not debar the disciplinary proceedings and to take action deemed fit. Again, on 29-5-92 a charge memo was issued to the Petitioner and the charges against him are that while he was working as BPM, the Petitioner did not bring into B.O. Accounts a total sum of Rs. 733/- representing deposits made by one Smt. Pavayee Ammal in her R.D. Account No. 828990 of Akkarapalayam branch office. Since the Petitioner denied the charges, enquiry was ordered and the Enquiry Officer after enquiring the matter has reported that charges are not proved and declared that the Petitioner is not guilty of the charges. But, the Disciplinary Authority has disagreed with the Enquiry Officer's findings and he forwarded disagreement note dated 28-6-93 to the Petitioner. Even though, the Petitioner has filed an explanation, it was not accepted and the Disciplinary Authority imposed the punishment of removal from service of the Petitioner. The appeal preferred by the Petitioner against that order was rejected. The Disciplinary Authority disagreed with the findings of the Enquiry Officer stating that deposition of the depositor Smt. Pavayee is unreliable one and based his reliance on the statement given by the Petitioner during the fact finding enquiry and imposed the punishment of removal from service. But, the Disciplinary Authority not basing his verdict on any evidence adduced before the enquiry, thus he has exceeded his jurisdiction and which is against the principles of natural justice and without application of mind and in violation of principles of natural justice, he found that the charges have been proved against the Petitioner. Since the Appellate Authority also confirmed the findings of the disciplinary Authority, the Petitioner raised an industrial dispute and on the failure of conciliation, the

matter was referred to this Tribunal. The termination order passed by the Respondent/Management is illegal, arbitrary and without application of mind and also in violation of principles of natural justice. Therefore, the Petitioner prays that an award may be passed in his favour by directing the Respondent to reinstate him into service with all monetary benefits with consequential relief.

4. As against this, the Respondent in its Counter Statement alleged that doubtno the Petitioner worked as Branch Post Master, Akkarapalayam branch post office and was placed under off duty on 1-10-90 on detection of cases of non-credits of deposits and he was removed from service w.e.f. 25-8-93 as a measure of disciplinary action as per rules. the non-credit of deposits received by the Petitioner in his capacity as Branch Postmaster in R.D. Account No. 828990 of Smt. Pavayee on vairous dates to the total amount of Rs. 733/-. Since the Petitioner has not completed three years of service, the Senior Superintendent of Post Offices, Salem East Division invoking the provisions of Rule 6 of P&T EDA (C&S) Rules, 1964 ordered for termination of the services of Petitioner by an order dated 15-2-91. In the appeal, the Respondent observed that as per rules, for the specific misconduct, the provisions of Rule 6 of P&T EDA (C&S) Rules, 1964 should not have been invoked and accordingly, he has set aside the order of termination with a direction that there was no bar for taking disciplinary action against the individual. As a result of investigation the Petitioner was found to have not accounted for an amount of deposits accepted for credit in RD account No. 828990 on various dates, duly making entries in the passbook to the satisfaction of the depositor. The Petitioner has also made initials authenticated by impression of post office date stamps on the respective dates, but failed to credit the amount thus received into P.O. accounts on the respective dates thereby violated Rule 13 (1) of Rules for Branch Office and thus failed to maintain absolute integrity and devotion to duty contravening Rule 17 of P&T EDA (Conduct & Service) Rules, 1964. No doubt, the Enquiry Officer in his report dated 15-4-93 held the charge against the Petitioner as not proved, based on the evidence of the depositor. But, the Senior Superintendent of Post Offices, Salem East Division, on a careful consideration of the evidences issued order dated 25-8-93 removing the Petitioner from service and the Appellate Authority after a careful consideration rejected the appeal filed by the Petitioner. During the visit of Assistant Superintendent of Post Offices, Salem South Sub Division on 13-9-90 and also during the preliminary enquiry, when the depositor Smt. Pavayee gave a statement on 13-9-90 confirming the deposits made by her and produced the passbook for investigation, the Petitioner has admitted the non-credit of amounts in the Post Office accounts. But, before the enquiry he stated that she was depositing in her R.D. Account amount belonging to her husband/her son and since she lent the amount to some other person, she requested the Petitioner to make entries and impress the

post office date stamp in the passbook to avoid misunderstanding in her family, which the Petitioner obliged and did so. But, the Disciplinary Authority after considering the documents and also the oral evidences, differed with the findings of the Enquiry Officer and he arrived at a conclusion based on the available evidence. The work of maintenance of R.D. Journal, safe custody of date stamp making entries in the passbooks for the transaction handled were to be undertaken purely under the personsal responsibility of the Petitioner in his capacity as Branch Postmaster and therefore, the conclusion reached by the Disciplinary Authority was based on evidence and there was no violation of principles of natural justice. The petitioner within the period of one year of his service has not accounted the money collected from the customer and he has misused his official position and therefore, the order passed by the Dicipinary Authourity cannot be questioned before any legal forum and there is no merit in the contention of the Petitioner. The order of penalty is legally valid, hence for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are—

(i) "Whether the action of the Respondent in terminating the services of the Petitioner is justified? "

(ii) "To what relief, the Petitioner is entitled? "

Point No 1

6. In this case the Petitioner, who worked as Extra Departmental Branch Post master, Akkarapalayam branch office, was removed by an order dated 25-8-93. He was terminated on the ground that while he was working as Branch Postmaster did not bring into branch office accounts the total amount of Rs. 733/- representing the deposits made by one Smt. Pavayee Ammal, who tendered her amount in her R.D. account No. 828990 on various dates. The case of the petitioner in this dispute is that the Enquiry Officer after considering all the evidences given by the witnesses, has come to the conclusion that the charge framed against him was not proved. But the Disciplinary Authority, on going through the report has disagreed with the findings given by the Enquiry Officer and he has sent disagreement note on 28-6-93 and even the Petitioner has given a valid explanation, it was not accepted by the disciplinary Authority and he has imposed the punishment of removal from service which is illegal and made without application of mind and further in violation of principles of natural justice and therefore, he wants this Tribunal to set aside the order impugned passed by the Respondent and to reinstate him in service

7. To substantiate his contention, the Petitioner has produced three documents which are marded as Ex. W1 to W3, whereas on the side of the Respondent/Management 19 documents are marked as Ex. M1 to M19. In this case, neither side examined any witness.

8. On behalf of the Petitioner, it was contended no doubt the Disciplinary Authority is entitled to differ with the findings given by the Enquiry Officer. But, in this case, the Disciplinary Authority has not based his reliance on any impeachable evidence to prove that the entries were made by the Petitioner in the R.D. passbook and the branch office R.D. Journal. Further, in this case, though the complainant has given evidence before the Enquiry Officer that she has not paid any amount as alleged by the charge sheet, but she has requested the Petitioner to make these entries and also to make impression of the date stamp of the post office to avoid misunderstanding in her family for which the Petitioner has obliged. The Disciplinary Authority has based his reliance on the statement given before the preliminary enquiry which was not cross examined by the Petitioner i.e. affected party and held that the charges have been proved against the Petitioner which is illegal and against the principles of natural justice. When there is no material evidence to prove that entries have been made by the Petitioner, holding that charges have been proved is arbitrary and illegal exercise of power and without application of mind and also in violation of principles of natural justice. It is further contended by the learned counsel for the Petitioner that basing his inference from the statements given in the preliminary enquiry is not valid in law. Further, before the Enquiry Officer, the complainant and other witnesses have stated that the statement given before the preliminary enquiry is not true and it was made without knowing the real intention and in such circumstances the Disciplinary Authority cannot base his conclusion on the statements made by the complainant and other witnesses during the preliminary enquiry. Therefore, without any application of mind, the Disciplinary Authority has come to a different conclusion than that of the Enquiry Officer and therefore, the order passed by the Disciplinary Authority is to be set aside.

9. As against this the learned counsel for the Respondent contended that the Petitioner even on 13-9-90 when the Assistant Superintendent of Post Offices, Salem South Sub-Division visited Akkarapalayam branch office, the Petitioner has admitted about the non-credit of deposits accepted by him in his capacity as Branch postmaster on various dates in R.D. Account No. 828990, then only the complainant was examined and she has given a statement before the Assistant Superintendent of post offices in which the said Mrs. Pavayee Ammal has admitted that she has paid Rs. 550 plus default amount of Rs.37 on 23-6-90, similarly she has paid Rs. 50 and Rs.100 on 23-7-90 and 6-9-90 respectively and the Branch Postmaster namely the Petitioner has made endorsement in the passbook for the receipt of said amount and also put the impression of post office seal. This statement given by the complainant and also the Petitioner had not been looked into by the Enquiry Officer and he has come to a conclusion only on the evidence given before him in the enquiry. The departmental enquiry should be made with regard to

documents filed before the enquiry and also oral evidences adduced before the said enquiry, but without going through the documents, the Enquiry Officer has come to a different conclusion that the charges framed against the Petitioner have not been proved. But, on consideration of the entire evidences before him, the Disciplinary Authority arrived at a conclusion that the charges framed against the Petitioner were proved. It is well settled that Disciplinary Authority can have a right to come to a different conclusion than that of the Enquiry Officer. Further, the Petitioner was also given an opportunity before arriving at such conclusion by the Disciplinary Authority and therefore, it cannot be said that the Disciplinary Authority has come to a conclusion without applying his mind and which is against the principles of natural justice. No doubt, the complainant who was given a statement before the preliminary enquiry that she has paid the amounts on various dates as mentioned in the passbook has given a different story before the Enquiry Officer. Further, the depositor namely Mrs. Pavayee Ammal stated that she did not actually hand over the amount to the Petitioner but the Petitioner has obliged to her request to avoid misunderstanding in her family but even for argument sake without conceding that the story of non deposit is true, it cannot be said as valid because the Petitioner was employed as Branch Postmaster to carry out the duties prescribed by rules and not to extend undue help to any outsider for their own advantage. As a person entrusted with responsibility of carrying out official duties and being the custodian of Govt. money/properties and records as Branch Postmaster, the Petitioner cannot oblige to the request of the outsider to the detriment of the Govt. records. Even the version of depositor is taken as correct, the Petitioner should not have obliged to her request. Therefore, it can be very well found that the deposition of the depositor namely Mrs. Pavayee Ammal given before the Enquiry Officer should be made at the instigation of the Petitioner after a long lapse of time and therefore, it was rightly construed by the Disciplinary Authority as not reliable. The work of maintenance of R.D. Journal, safe custody of date stamp, making entries in passbooks for transaction handled were to be undertaken purely under personal responsibility of the Petitioner in his capacity as Branch Postmaster. In this case, it is proved that the Petitioner has made entries in passbook after receiving the amount mentioned in the passbook and it was duly authenticated by the post office date stamp. Against this documentary evidence, by an oral evidence given by the depositor and that too, after a long lapse of time, the Disciplinary Authority cannot come to a different conclusion, and therefore, the onus of proof lies on the Petitioner to establish that he had not made entries in the passbook. But, in this case, the Petitioner has admitted that he has made entries in the passbook and authenticated the said entries by affixing the date stamp of the post office. Therefore, even assuming for argument sake that the Petitioner has not received the amount and he has made

entries in the pass book without receiving the amount, it is clearly established that he has misused his official position and obliged for the depositor namely Mrs. Pavayee Ammal, which is in violation of rules and regulations and for doing such unofficial commitments, the Petitioner is not competent and therefore, it can very well be construed that the Petitioner has committed a grave error misusing his official position. Under such circumstances, the order passed by the Disciplinary Authority is legally valid and binding on the Petitioner. It is to be noted in these circumstances that the Petitioner within a period of one year of his service, has committed the misconduct and he was able to misuse his official position as confirmed by the deposition of depositor namely Mrs. Pavayee Ammal before the Enquiry Officer. Under such circumstances, it cannot be said that the order passed by the Disciplinary Authority is without application of mind. The Petitioner, who was the person entrusted with responsibility of carrying out official duties and being the custodian of Govt. money and records as Branch Postmaster has committed this grave error and therefore, it cannot be said that the order passed by the Disciplinary Authority and the penalty imposed by him is not valid in law.

10. I find much force in the contention of the learned counsel for the Respondent because even assuming for argument sake without conceding that the Petitioner has made these entries to oblige the depositor namely Mrs. Pavayee Ammal, I find the action of the Respondent against the Petitioner is valid and as the Petitioner himself misused his official position as Branch Postmaster and has done a gross misconduct, therefore, the contention of the learned counsel for the Petitioner cannot be accepted for setting aside the order passed by the Disciplinary Authority. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

11. In view of my finding that the order passed by the Disciplinary Authority in this case is valid in law, I find the Petitioner is not entitled to any relief. No Costs.

12. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd July, 2004.)

K. JAYARAMAN, Presiding Officer

Witness Examined :—

On either side : None

Documents Marked :—

For the I Party/Workman :

Ex. No.	Date	Description
W1	18-3-93	Xerox copy of the Presenting Officer's brief.

Ex. No.	Date	Description
W2	30-3-93	Xerox copy of the defence brief
W3	Nil	Xerox copy of the daily order sheets.
For the II Party/Management :		
M1	1-10-90	Xerox copy of the put off duty memo issued to Petitioner.
M2	11-10-90	Xerox copy of the ratification order issued by Senior Superintendent of Post Offices, Salem East Divn.
M3	15-02-91	Xerox copy of the termination order issued to Petitioner.
M4	10-1-92	Xerox copy of the memo for setting aside the order of termination.
M5	25-2-92	Xerox copy of the memo placing the Petitioner under put off duty.
M6	29-5-92	Xerox copy of the charge sheet issued to Petitioner.
M7	15-4-93	Xerox copy of the report of Enquiry Officer.
M8	20-6-93	Xerox copy of the disagreement note of Disciplinary Authority.
M9	28-6-93	Xerox copy of the letter of Senior Superintendent of Post Offices, Salem ED to Petitioner enclosing report of Enquiry Officer.
M10	27-7-93	Xerox copy of the representation given by the Petitioner.
M11	25-8-93	Xerox copy of the order of removal issued by Senior Superintendent of Post Offices, Salem ED to Petitioner.
M12	27-4-95	Xerox copy of the order of Appellate Authority.
M13	13-9-90	Xerox copy of the statement given by Petitioner before Assistant Superintendent of Post Offices, Salem SSD.
M14	1-10-90	Xerox copy of the statement given by Petitioner before Assistant Superintendent of Post Offices, Salem SSD.
M15	13-9-90	Xerox copy of the statement given by Pavayee Ammal, depositor.
M16	11-10-90	Xerox copy of the letter given by Mrs. Pavayee Ammal to Respondent.
M17	24-1-91	Xerox copy of the letter given by Mrs. Pavayee Ammal to Respondent.
M18	11-3-93	Xerox copy of the deposition of Smt. Pavayee Ammal before Enquiry Officer.
M19	Nil	Xerox copy of the R.D. PB 828990 deposited by Smt. Pavayee Ammal.

नई दिल्ली, 31 अगस्त, 2004

AWARD

का. आ. 2385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, एच. ए. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नम्बर-II मुम्बई (संदर्भ संख्या सी.आई.जी.टी. 2/104) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-2004 को प्राप्त हुआ था।

[सं० एल-42012/9/2001-आई आर (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. CGIT-2/104 of 2001 of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai No. 2 as shown in the Annexure in the Industrial Dispute between the management of M/s. Hindustan Aeronautics Ltd. and their workmen, received by the Central Government on 27-8-2004.

[No. L-42012/9/2001-IR (C-II)]

N. P. KES AVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT MUMBAI

Present: JUSTICE S. C. PANDEY
Presiding Officer

REFERENCE NO. CGIT-2/1 OF 2004

Old Reference CGIT-2/104 of 2001

EMPLOYERS IN RELATION TO THE
MANAGEMENT OF HINDUSTAN
AERONAUTICS LTD.

The Chief Manager (P&A),
Hindustan Aeronautics Ltd.,
Nashik Division,
Ojhar Township Post Office,
Nashik 422 207.

AND

THEIR WORKMEN

Shri Dadabhai Badshah Patel,
R/o At & Post Vinchur Dalvi,
Tal. Sinnar,
Dist. Nashik (MS).

APPEARANCES:

For the Employer : Shri P. N. Anaokar,
Advocate

For the Workman : Shri S. D. Gangurde,
Advocate

Mumbai, dated 19th July, 2004.

This is a reference made by the Central Government under clause (d) of sub-section 1 and sub-section 2 A of Section 10 of the Industrial Disputes Act, 1947 (the Act for short) for giving an award after adjudication of an industrial dispute between Dadabhai Badshah Patel (the workman for short) and the Hindustan Aeronautics Ltd. (the Company). The terms of dispute are as follows:

“Whether the action of the management of Hindustan Aeronautics Ltd., Nashik in dismissing Shri Dadabhai B. Patel, Fitter General ‘A’ from services w.e.f. 15-05-1992 is legal and justified? If not, to what relief the workman is entitled to?”

2. The undisputed facts of this case are that the workman was working as a confirmed Fitter in the Category General ‘A’ with the company. It is not in dispute that the workman was given chargesheet dated 4-10-1991. An enquiry was held against the workman. Pursuant to that domestic enquiry an order dated 8-9-92, terminating the services of the workman was passed. It is also not in dispute that the workman was served with notice dated 5-6-92 whereby the workman was told that he was absent from duty with effect from 15-5-92. By this notice he was asked to report to the Personnel Officer by 11-6-92 and explain the reasons for remaining absent failing which it shall be deemed that the workman had voluntarily abandoned his job from 15-5-1992.

3. The case of the workman was to the effect that after service of notice dated 5-6-92, he was not allowed to join duty. His name was struck off from the rolls of the Company because of non-compliance of the terms of notice dated 5-6-92. The workman claimed that he was sick and that he had submitted medical certificates showing the cause of his absence and therefore, it could not be said that he had voluntarily abandoned his services. Consequently, the termination of the services was bad in law as it amounted to retrenchment in violation of Section 25 F of the Act. The workman also challenged the domestic enquiry. According to him principles of natural justice were violated by Shri Ranade, the Enquiry Officer. The Enquiry Officer was biased in favour of the Company. The findings recorded by the Enquiry Officer were perverse. The punishment was illegal. The charges were vague. The workman stated that initially the reference was made to Labour Court by Maharashtra Government. The reference IDA No. 40 of 1994 was disposed of as non-maintainable by order dated 26-10-99 because the appropriate Government was the Central Government. The workman claimed setting aside of orders dated 5-6-92 w.e.f. 15-5-92 and 8-9-92 and claimed an award for re-instatement with back wages.

4. In the written statement filed by the company, it was claimed that reference was not maintainable on account of delay. However, the facts relating to the passing of the

order dated 26-10-99 by Labour Court were not disputed. It was also not disputed that the workman had started conciliation proceedings before Assistant Labour Commissioner (Central). Thereafter the reference was made. It was further stated that the reference was bad because the company dismissed the workman in fact on 8-9-92 after holding an enquiry. The reference referred to order dated 15-5-92, therefore it was bad in law and this Tribunal had no jurisdiction regarding termination of services of the workman by order dated 8-9-92 as the dispute was not referred to the Tribunal. It was pleaded that the services of the workman were not treated as abandoned as per notice dated 5-6-92. His name was not struck from the muster rolls. According to the company, the workman was really dismissed by order dated 8-9-92. The fact that the workman submitted leave application and medical certificate was not disputed in para 13 of Written Statement. It was stated the workman had submitted false certificate. The real cause for his absence was other than sickness. The workman was directed to report on duty and submit himself for medical examination by notice dated 5-6-1992. The workman received the letter. The workman was given sufficient and reasonable opportunity to defend himself. The workman was given show cause notice against the proposed punishment. It was pleaded that past record of the workman was considered for passing the order.

5. The workman filed a rejoinder. Most of it was repetition of the facts stated by him in the Statement of Claim. However he denied that the reference was liable to be rejected on the ground of delay. In paragraph 13 of the rejoinder, the workman asserted again that by order dated 5-6-92 he was dismissed on the ground of voluntary abandonment by the Company. His name was struck from the muster rolls of the company. It was claimed that company had no right to terminate services by order dated 8-9-92 when it had already terminated the services of the workman in accordance with the order dated 5-6-92. There are other averments in the rejoinder but we are not concerned with those pleadings.

6. It appears my predecessor Shri S. N. Saundankar, the then Presiding Officer by Award dated 25-8-2003 recorded the finding on two preliminary issues and gave the answers to the effect that the domestic enquiry was vitiated because it was not conducted as per the principles of natural justice. He did not consider it necessary to record a finding on the question of perversity of findings. No request was made before him that further opportunity be given to prove the charges, therefore, he gave an award reinstating the workman with backwages and consequential monetary benefits.

7. It appears that by Order dated 19-1-2004 in Writ Petition 3009/2003 Hon'ble Justice Shri R. M. S. Khandeparkar of High Court of Bombay has set aside the Award dated 2-8-2003 and remitted it back to the Tribunal. My predecessor had gone back to his parent department

and therefore it fell in the hands of this Presiding Officer of Central Government Industrial Tribunal No. 1 to decide this case.

8. The relevant portion of the order passed by the Learned Single Judge of Bombay High Court are as follows :

2. The petitioner challenges the impugned Award dated 2-6-2003 passed by the Industrial Tribunal, Mumbai on various grounds, suffice to refer to only one ground, namely, that the Tribunal appears to have totally ignored the important factual aspect of the matter while deciding the reference in as much as that it was brought to the notice of the Tribunal that the termination of the employee was in fact effected from 8-9-1992 consequent to the order of termination and not with effect from 15-5-92. The entire discussion in the Award, however, appears to be on the basis that the termination was effected from 15-5-92. Being so, the impugned Award on the said ground itself cannot be sustained and is liable to be set aside and the matter to be remanded to the Industrial Tribunal to decide the same afresh, after hearing the parties. The direction to hear the parties does not include liberty to the parties to lead any further evidence in the matter. The matter will have to be decided on the basis of whatever materials which are already placed on record by the parties prior to the date of passing of the impugned Award.

3. However, before passing the fresh Award, the parties are to be heard on the said materials on record and the same to be disposed of in accordance with the provisions of law. It is made clear that this Court has not expressed any opinion on any of the points sought to be raised in the petition, other than the one on which the matter is being remanded.

4. In the result, the impugned Award is hereby quashed and set aside and the matter is remanded, as stated above. The rule is made absolute in above terms with no order as to costs.

9. From the above statement of facts of the case, it would appear that there is some confusion because of the order of reference. In the order of reference there is mention of order of dismissal dated 15-5-1992. However the pleadings of the parties indicate that an enquiry was held and the services of workman were terminated by Order dated 8-9-92. It would also be clear that the workman had taken the initial stand that he was dismissed by order dated 5-6-92 on the ground he had voluntarily abandoned the job w.e.f. 15-5-92. His name was struck off from the rolls. It would appear that the alternative ground that the workman had taken was that the enquiry was bad and therefore the order dated 8-9-92 too was bad.

10. However since the High Court has held that the workman was dismissed in fact from 8-9-92 consequent to

the order of termination after enquiry and not from 15-5-92. This Tribunal cannot travel beyond the order of the High Court. It cannot now hold that the workman was dismissed w.e.f. 15-5-92 on the ground of abandonment of his job by order dated 5-6-92. The entire controversy now centers around the question if the enquiry held against the workman was bad and consequently the order dated 8-9-92.

11. The Learned Counsel for the company sought to argue that the Tribunal had no jurisdiction to decide the dispute because the terms of reference say that the workman was dismissed on 15-5-92. It would be proper to hold that the company had filed the Writ Petition in the High Court. Such an obvious point would not have escaped the attention of the High Court and the company would have succeeded on the finding that the workman was dismissed on 8-9-92 and not from 15-5-92. The company cannot raise this point before this Tribunal because this point was not argued in the High Court. Besides, under clause (d) of Sub-Section (1) the appropriate Government has power to refer an industrial dispute mentioned in second or third schedule. The item No. 3 of second schedule covers the industrial dispute referred to this Tribunal. The dispute in question is covered by the definition of Industrial Disputes under Section 2 (K) of the Act read with Section 2A thereof. Therefore it cannot be disputed that this Tribunal has jurisdiction to decide a dispute regarding dismissal, discharge or other wise termination of service. The appropriate Government has power to refer the dispute under clause (d) of sub-section 1 of Section 10 of the Act. In the adjudication a dispute between the parties is of essence. Here there is an industrial dispute regarding the dismissal of the workman. The error in the date of dismissal in the administrative Order of reference can be corrected because it is subsidiary to the real dispute. The correction of the date of dismissal is a matter ancillary to the industrial dispute. It is a minor or a casual mistake. The fact that the services of the workman were terminated after enquiry is fundamental. The date of dismissal is merely incidental which according to the company itself 8-9-92 and not 15-5-92. The company did not plead or prove that the workman had made a demand that he be restored back in service on account of his dismissal w.e.f. 15-5-92 nor was any attempt made to prove that during the conciliation proceedings the nature of industrial dispute was confined to the dismissal w.e.f. 15-5-92. On the other hand the pleadings of the workman indicate that he had taken up both the stands. Firstly said that he was dismissed with effect from 15-5-92. Alternatively he submitted that he was dismissed from 8-9-92. Under these circumstances it would be proper to hold and thus this Tribunal can hold that the true facts are that workman was dismissed on 8-9-92 pursuant to the enquiry and date of dismissal be deemed to be modified as 8-9-92 and not 15-5-92 mentioned in the order of reference. This Tribunal is bound by the order of the High Court in W.P. No. 3009 of 2003 dated 19-1-2004. The Learned counsel for

the company relied upon the decision of Pottery Mazdoor Panchayat V/s. Perfect Pottery Co. 1979 LIC 827 (SC). The case is distinguishable. The terms of reference related to proposed closure w.e.f. from 1-7-1967. The date of reference was June 1960 in case of M.P. Govt. The terms of reference before the Central Govt. Industrial Tribunal were different. They were regarding the justification of the retrenchment of 81 workers w.e.f. 1-7-67. The Supreme Court upheld the decision of the High Court as the reference made by the M.P. Govt. to the State Industrial Court in respect of proposed closure was premature. It was also held that second reference came in the same category. It was held that fact of actual closure of business or pretended lockout was not referred to the Tribunal. The case is distinguishable. The second case relied upon is the case of Kaushik J. Gandhi V/s. Sandesh Ltd. 2003 ICLR 10009, this case is also distinguishable. In that case the oral order of termination dated 11-6-1981 was challenged by the workman under Section 2(a) of the Act. He did not wait for conclusion of departmental enquiry pursuant to notice dated 12-6-1981. The enquiry culminated in the order of dismissal dated 6-10-1981. On 12 June 1981 the order of dismissal dated 6-10-1981 was not in existence when the workman raised the dispute on 12-6-1981, therefore, it was held that the reference was confined to oral termination dated 11-6-1981 and the decision of Labour Court was upheld. Since the order of termination did not form part of the industrial dispute raised by the workman the Gujarat High Court gave liberty to the workman to raise a fresh industrial dispute. In this case the industrial dispute was raised much after the termination of service by way of domestic enquiry. It is not case of other party that dispute regarding dismissal was confined only to termination of service on 15-5-92 and not on 8-9-92 thus this Tribunal is of the opinion that real industrial dispute between the parties was regarding dismissal of workman as raised before the Assistant Labour Commissioner (Central) mentioning the date was merely incidental. The argument is rejected in absence of any evidence to the effect that the industrial dispute was confined to dismissal w.e.f. 15-5-92. On the other hand, the company itself stated that it had dismissed the workman on 8-9-92.

12. Once it is held that the company dismissed the workman as a consequence of order dated 8-9-92 after holding of an enquiry, the following further questions arise by way of preliminary issues :

- (a) Whether the enquiry was in accordance with the principles of natural justice?
- (b) Whether the findings was perverse?
- (c) Whether the workman is entitled to any relief particularly when he had raised the industrial dispute after considerable time.

13. On issue No. 1 (a) it is found from the proceedings recorded on 21-2-92 that the ex parte

proceedings held on 3-1-1992 were reopened in accordance with the letter dated 8-10-92. The workman was present before the enquiry officer on that date along with the defence representative. The evidence of L.J. Gerge was taken in the presence of the workman and his defence representative. The witness for the company was cross examined by the defence representative thereafter, the workman submitted his statement. Although the workman was not supplied with the copies of leave application and medical certificates, he did not object to non supply of these documents. He was supplied with zerox copies of these applications, thereafter the workman submitted his reply. In view of the aforesaid facts it cannot be said that the workman was not given a reasonable opportunity of hearing.

14. The next question is if the findings recorded against the workman are perverse. The findings recorded against the workman do not appear to be perverse. The enquiry report in paragraph 2 to 7 shows that the workman remained absent without applying for leave. Sometimes he applied for leave with medical certificates after expiry of the period of his absence. Some times he did not submit medical certificate. The conclusion drawn by the Enquiry Officer that workman was in the habit of remaining absent appears to be based on the evidence produced before him. The workman did not dispute that he was absent. He claimed that he remained absent because he was sick and he was treated at Bhagur Municipal Hospital. He claimed that he could not attend the hospital. The defence of the workman that he had availed leave without pay was not accepted. Thus for the entire period the workman remained absent for 70 days. In view of the matter the charge of habitually remaining absent between the period of 1-6-1991 to 9-9-1991 without leave was proved. Previously also the workman behaved in same manner. The workman committed the breach of rules and regulations. This Tribunal, therefore, decides that findings recorded are not perverse.

15. This Tribunal holds that the workman was given full opportunity to challenge the findings and to question the proposed punishment of dismissal. This Tribunal does not find that order of dismissal can be faulted.

16. The result of the aforesaid discussion that this reference is answered by stating that the termination of the services of the workman is legal and justified. No interference is called for with the order of dismissal. No costs.

Justice S. C. PANDEY, Presiding Officer

नई दिल्ली, 31 अगस्त, 2004

का. आ. 2386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़

(संदर्भ संख्या 55/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-2004 को प्राप्त हुआ था।

[सं० एल-23012/52/98-आईआर (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 55/99 of the Central Govt. Indus. Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of BBMB and their workmen, received by the Central Government on 27-8-2004.

[No. L-23012/52/98-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT CHANDIGARH

Presiding Officer SHRI KULDIP SINGH,

Case No. ID 55/99

Received on : 25-2-1999

Decided on :

Sh. Gurnaib Singh C/o Sh. R.K. Singh Parmar, Secretary, PB. INTUC, Qtr. No. 35-G, Nangal Township, Distt. Ropar

....Applicant.

Versus

The Chief Engineer (Generation)

B.B. M. B., Nangal Township, Distt. Ropar.

.... Respondent.

APPEARANCES:

For the Workman : SH. R.K. Singh

For the Management : SH. Rajinder Singh

AWARD

Central Govt. in exercising the powers U/s 10 of ID Act 1947 vide No. L-23012/52/98-IR (CM-II) dated 17th February 1999 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of BBMB rep. by Chief Engineer (Generation), in termination the service of Sh. Gurnaib Singh, S/o Sh. Balwant Singh, Casual Labour w.e.f. 18-12-1997 without following the provisions of Section 25-F of the I.D. Act, 1947 is justified? If not, to what relief the workman is entitled?"

2. Today the case was fixed for filing of claim statement by the workman. The authorised representative of the workman today made a statement that the workman does not want to persue with the present reference and the same may be returned as withdrawn. In view of the same, the reference is returned to the Ministry as withdrawn. Central Government be informed.

Chandigarh KULDIP SINGH, Presiding Officer
22-7-2004

नई दिल्ली, 31 अगस्त, 2004

का. आ. 2387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.सी.सी.एल. प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल (संदर्भ संख्या 66/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-2004 को प्राप्त हुआ था।

[सं० एल-22012/183/97-आई आर (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 66/1997) of the Central Government Indus. Tribunal-Cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of BCCL, and their workmen, received by the Central Government on 27-8-2004.

[No. L-22012/183/1997-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri Md. Sarfaraz Khan, Presiding Officer.

Reference No. 66 of 1997.

Parties : Agent, Victoria West Colliery,
M/s. BCCL., P.O. Barakar,
Dist. Burdwan. . . Management.

Vrs.

Sri Ram Mahara, U.G. Loader through
Br. Secretary, Janta Mazdoor Sangh,
Damagoria Colliery Branch,
P.O. Kalyaneswari,
Dist. Burdwan . . . Workman.

Representatives :

For the Management : Sri P.K. Das, Advocate.

For the Workman : (Union),

Sri S.K. Singh, Br. Secretary,
Janta Mazdoor Sangh.

Industry : Coal State : West Bengal.

Dated the 11th August, 2004

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) Government of India, through the Ministry of Labour vide its Order No. L-22012/183/97-IR-(C-II) dated 12-11-1997 has referred the following dispute for adjudication by this Tribunal.

“Whether the action of the management of Victoria West Colliery of M/s BCCL in dismissing the services of Sh. Ram Mahara, U.G. Loader is Justified? If not, to what relief is the workman concerned entitled to?”

In pursuance to the summons issued by this tribunal both the concerned parties made their appearance through their respective representatives and accordingly filed their separate written statement in support of their claims. Sri P. K. Das, Advocate represented the Management and Sri S.K. Singh, Br. Secretary, Janta Mazdoor Sangh represented the workman. Initially both the parties contested the dispute.

In brief the facts of the case is that Sri Ram Mahara, Workman was a regular employee of Victoria West Colliery as underground loader who was subsequently dismissed from his service on 5-10-1996 by the management on the ground of unauthorised absence from duty from 30-01-1996 to 17-07-1996.

The record goes to show that the hearing on the preliminary point was already concluded and finally the order on that point was passed on 25-03-1998 where it was held by then Presiding Officer that there was no unfairness or invalidity in the enquiry proceeding and subsequently was fixed for final hearing on merit of the case. To-day i.e. 11-08-2004 was the date fixed for final hearing of the case. A Joint petition by the respective parties was filed in the Court stating therein that the concerned workman has already been reinstated by the management. It was jointly submitted by the respective representative of parties that there is no any dispute pending between the parties and the dispute has already been resolved by way of reinstating the workman in the service by the management. So a no dispute award was submitted to be passed.

In view of the above facts, prevailing circumstances and the joint submission of the respective representative of the parties. it is hereby ordered that let a ‘No Dispute’ award be passed. Let the copies of the award be sent to the Ministry for information and needful.

MD. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 31 अगस्त, 2004

का. अ. 2388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, एस. ई.सी. एल. प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल (संदर्भ संख्या 13/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-2004 को प्राप्त हुआ था।

[सं० एल-22012/23/2000-आई आर (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 13/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of SECL, and their workmen, which was received by the Central Government on 27-8-2004.

[No. L-22012/23/2000-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

PRESENT : Md. Sarfaraz Khan, Presiding Officer.

Reference No. 13 of 2001.

Parties : Agent, Lachipur Colliery, M/s. E. C.
Ltd.,
PO : Kajoragram, Distt. : Burdwan....
Management

Vrs.

Trinath Jena, Wagon Loader,
represented by Koyala Mazdoor
Congress, Asansol.Workman.

Representatives :

For the Management : Shri P. K. Das, Advocate.

For the workman : Shri S. K. Singh, Br. Secretary,
(Union) Koyala Mazdoor Congress,
Asansol.

Industry : Coal : State : West Bengal.

Dated : 17-08-2004.

AWARD

In exercise of power conferred by clause D of Sub-section (1) and Sub-section 2(A) of the Section 10 of the Industrial Disputes Act, 1947, Govt. of India, through the Ministry of Labour vide its order No. L-22012/23/2000-IR

(C-II) dated 27-4-2001 has been pleased to refer the following dispute for adjudication by this Tribunal.

"Whether the action of the management of Lachipur Colliery of M/s. Eastern Coalfields Ltd. in not communicating the result of the Apex Medical Board to Shri Trinath Jena, Wagon Loader and superannuating him on 1-1-99 is legal and justified? If not, what relief the workman is entitled to?"

In pursuance to the issuance of the summons by this Tribunal to both the concerned parties to the dispute appeared through their respective representatives and thereafter filed their separate sets of written statements of their claims.

2. Shri P.K. Das, Advocate, represented the management and Shri S.K. Singh, Br. Secretary of Koyala Mazdoor Congress, Asansol represented the workmen. Both the parties after filing their written statements in support of their claims contested the dispute.

3. In short the facts of the dispute goes like this that one Shri Trinath Jena was appointed as a Wagon Loader and was permanent worker of the aforesaid concerned colliery having UM No. 576024. He had raised the dispute in respect of the consideration of his age. But the same was not considered by the management. So a case was filed by him before the Hon'ble High Court, Calcutta where the direction was given to the management to get his age assessed by the Apex Medical Board and in pursuance of the said order the delinquent was asked by the management to appear before the Apex Board on 15-7-98. Accordingly the workman appeared before Apex Board but till the last, the result of the Apex Board was not published by the management inspite of repeated request and assurance given. Ultimately being aggrieved, the Industrial Dispute was raised and Govt. of India, Ministry of Labour decided to refer the dispute before this Tribunal to adjudicate upon.

4. The further case of the workman is that again an appeal was preferred before the Hon'ble High Court, Calcutta praying therein for the publication of the result of the Apex Board held on 15-7-98. After hearing both the sides the Hon'ble High Court allowed the writ petition by directing to implement the report of the Apex Board dated 15-7-98 and to allow the petition to join his services and to continue till his superannuation on the basis of such date of birth as found by the Apex Medical Board along with the payment of all wages in arrears within period of 3 months from the date of communication of the order.

5. On perusal of the record it transpire that after hearing both the parties then P.O. had fixed the case for final argument as the parties had declined to adduce their evidence. Accordingly the case was called up today i.e. 17-8-2004 for hearing. It appears that a joint petition duly signed by the representatives of both the parties, along with a photocopy of the Form of Memorandum of

Settlement, has been filed in the Court. It was jointly submitted by their representatives that the concerned workman, Trinath Jena has already been reinstated in the service as per the findings of their Apex Medical Board and has got the benefit of the assessment of the age. It was jointly prayed that a settlement award may kindly be passed.

6. In view of the above facts, prevailing circumstances, joint petition, Form of the Memorandum of the settlement duly signed by the respective parties and the joint submission of the representative of the parties, it is hereby ordered that let an award by way of settlement be passed. The Memorandum of settlement filed shall form part of the award.

7. Let the copies of the award be sent to the Ministry for information and needful.

MD. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 31 अगस्त, 2004

का. आ. 2389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल (संदर्भ संख्या 67/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-2004 को प्राप्त हुआ था।

[सं० एल-22012/182/97-आई आर (सी-II)]

एन०पी० केशवन, डेस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/1997) of the Central Govt. Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of BCCL, and their workmen, received by the Central Government on 27-8-2004.

[No. L-22012/182/97-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

PRESENT : Md. Sarfaraz Khan, Presiding Officer.
Reference No. 67 of 1997

PARTIES : Agent, Victoria West Colliery of M/s.
B.C.C. Ltd.,
PO : Barakar, Dist. Burdwan
.....Management

Vrs.

Sri Nagaram Das, U.G. Loader through Br. Secretary,
Janta Mazdoor Sangh, Damagoria Colliery Branch,
Dist. Burdwan

....Workman

REPRESENTATIVES:

For the Management : Shri P. K. Das, Advocate.

For the workman : (Union),
Shri S. K. Singh, Br. Secretary,
Janta Mazdoor Sangh,

Industry : Coal State : West Bengal.

Dated, the 11th August, 2004.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of the Section 10 of the Industrial Disputes Act, 1947, (14 of 1947) Govt. of India, through the Ministry of Labour vide its Order No. L-22012/182/97-IR (C-II) dated 12-11-1997 has refer the following dispute for adjudication by this Tribunal.

“Whether the action of the management of Victoria West Colliery of M/s. BCCL in dismissing the services of Sri Nagaram Das, U.G. Loader is justified? If not, to what relief is the workman concerned entitled to?”

In pursuance to the summons issued by this Tribunal to both the concerned parties made their appearance through their respective representatives and accordingly filed their separate written statement in support of their claims. Sri. P.K. Das, Advocate represented the Management and Sri S.K. Singh, Br. Secretary, Janta Mazdoor Sangh represented the workman. Initially both the parties contested the dispute.

In brief the facts of the case is that Sri Nagaram Das, workman was a regular employee of Victoria West Colliery as under ground loader who was subsequently dismissed from his service on by the management on the ground of unauthorised absence from duty from 10-9-1995 and onward for about two calendar years.

The record goes to show that the hearing on the preliminary point was already concluded and finally the order on that point was passed on 25-3-1998 where it was held by then Presiding Officer that there was no unfairness or invalidity in the enquiry proceeding and subsequently was fixed for final hearing on merit of the case. Today i.e. 11-8-2004 was the date fixed for final hearing of the case. A joint petition by the respective parties was filed in the Court stating therein that the concerned workman has already been reinstated by the management. It was jointly submitted by the respective representative of parties that there is no any dispute pending between the parties and the dispute has already been resolved by way of reinstating the workman in the service by the management. So a no dispute award was submitted to be passed.

In view of the above facts, prevailing circumstances and the joint submission of the respective representative of the parties. It is hereby ordered that let a ‘No Dispute’

award be passed. Let the copies of the award be sent to the Ministry for information and needful.

MD. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 31 अगस्त, 2004

का. आ. 2390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, एन.आई.पी.एम. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई (संदर्भ संख्या 37/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-2004 को प्राप्त हुआ था।

[सं० एल-42012/182/2002-आई आर (सी एम-II)]

एन०पी० केशवन, डेस्क अधिकारी

New Delhi, the 31st August, 2004

S.O. 2390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.37/2003) of the Central Govt. Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of National Institute of Port Management, and their workmen, received by the Central Government on 27-8-2004.

[No. L-42012/182/2002-IR (M-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 13th July, 2004

PRESENT : K. JAYARAMAN,
Presiding Officer

INDUSTRIAL DISPUTE NO. 37/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of National Institute of Port Management and their workman.

BETWEEN

Sri B. Kumar : I Party/Petitioner
AND

The Management : II Party/Management
National Institute of
Port Management,
Chennai.

APPEARANCE:

For the Workman : M/s. Row & Reddy &
W.T. Prabhakar,
Advocates

For the Management : M/s. R. Arumugam,
N. Krishnakumar,
Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-42012/182/2002-IR(CM-II) dated 17-02-2003 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the order of dismissal of Shri B. Kumar by the management of NIPM is legal and justified? If not, what relief the workman is entitled to?”

2. After the receipt of the reference, it was taken on file as I.D. No. 37/2003 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner joined the services of II Party/Management as a driver in 1986. While so, he was surprised to receive a charge sheet cum show cause notice dated 3-12-93. The charges framed against the petitioner are (i) the Petitioner had on 11-11-92 contracted a 2nd marriage with Ms. Nirmala co-employee of National Institute of Port Management, while the 1st wife was living; (ii) the Petitioner had suppressed his 2nd marriage from NIPM authorities until he was asked to make a declaration on 15-6-93; (iii) the Petitioner is liable for prosecution under section 17 of Hindu Marriages Act and Section 494 of IPC and (iv) the Petitioner had illicit relationship with Ms. Nirmala, co-employee of NIPM. After issuing chargesheet, the Petitioner was suspended on 23-6-93. Even though he has given explanation denying the charges, the Respondent/Management has rejected the explanation and decided to hold a domestic enquiry. The Enquiry Officer finally concluded by giving a report dated 20-12-96 and held that the workman was not guilty of the said charges, but the Disciplinary Authority and Appellate Authority found guilty of the petitioner and awarded him the capital punishment by terminating him from service. With regard to charge No. 1, though he has registered the marriage with Ms. Nirmala on 11-11-92, it is under her compulsion and pressure only. Though NIPM rules and regulations which was approved by Government of India on 28-9-92, it was displayed in the Respondent's notice board only on 12-7-93. Therefore, when the registration of so called marriage with Ms. Nirmala took place, the Petitioner was totally unaware of the provisions of NIPM rules and regulations, under which he was charge sheeted. Even assuming without conceding that the said NIPM rules and regulations apply to the Petitioner, it will also equally apply to Ms. Nirmala with whom the so called marriage was registered. Such being the case, the NIPM authorities has not inflicted any punishment against Ms. P. Nirmala under whose compulsion and pressure only the so called marriage was registered, which proves the Respondent's biased attitude. Further, the Petitioner had not entered into any civil marriage

with his co-employee Ms. Nirmala. Further, the family court had decreed that the marriage of Ms. P. Nirmala with Petitioner which was registered on 11-11-92 as null and void and therefore, the Petitioner was not guilty of the first charge. With regard to 2nd charge, even though NIPM rules was approved on 28-9-92, in this case, the Petitioner was asked to make a declaration only on 15-6-93 and the Petitioner had given his declaration within 24 hours. Even assuming for argument sake without conceding the NIPM rules apply to the Petitioner, it only states that an employee who has married a person other than Indian Nationality shall forthwith intimate the fact to the Director. Therefore, the Petitioner is not guilty of charge of suppressing information regarding his marriage to NIPM authorities. With regard to 3rd charge that the Petitioner is liable under section 17 of Hindu Marriage Act and Section 494 of IPC, the Petitioner has not committed any wrong for being prosecuted under the said sections. As per Section 198 of Cr. P.C. a third party cannot prosecute the Petitioner for the offence of bigamy because the charge itself is not maintainable. With regard to 4th charge, there is no evidence in this case to prove that the charge of illicit relationship with Ms. Nirmala, co-employee of NIPM or any act amounting to moral turpitude. Further, the Disciplinary Authority while disagreeing with the Enquiry Officer's findings and recommending major punishment without recording tentative reasons for its disagreement amounts to gross denial of justice to the Petitioner. The Appellate Authority has also passed an order concurring with the findings of the Disciplinary Authority without applying his mind. Therefore, the orders passed by the Disciplinary Authority and Appellate Authority are perverse and bad in law. Therefore, for all these reasons, the Petitioner prays to set aside the order impugned and direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that the Respondent institute is only a training institute to train the officials of major ports and related organisations and it was run without any profit motive. Therefore, the Respondent institute does not come within the definition of Industry as defined under Section 2(s) of the Industrial Disputes Act, 1947. Therefore, this industrial dispute is not maintainable before this Tribunal. No doubt, the Petitioner joined as a driver in the Respondent management w.e.f. 8-11-86. As per family particulars declared by him in writing on 25-3-89, he was married and has got his wife and one child as on that date. Subsequently, the Respondent institute got an information that the Petitioner had entered into a marriage with Ms. P. Nirmala a co-employee of Respondent. In order to ascertain the truth, the Respondent by a letter dated 15-6-93, requested the Petitioner to furnish details of reported marriage with Ms. P. Nirmala and in which the Petitioner has admitted his 2nd marriage with Ms. Nirmala. As per

NIPM rules XIX, no employee shall enter into or contract a marriage with a person having a spouse living and no employee having a spouse living shall enter into or contract a marriage with any other person and in view of the specific provision in Conduct & Discipline Rules and based on the reply submitted by Petitioner, the Respondent issued suspension order on 25-6-93. Further, charge sheet dated 3-12-93 was served on him and five charges were framed against him. Since the explanation given by the Petitioner was not satisfactory, departmental enquiry was initiated. Even though the Enquiry Officer has held that the charges have not been proved, the Disciplinary Authority namely the Director of NIPM after examining the enquiry proceedings, the findings of the Enquiry Officer, documents produced, oral evidences adduced and other relevant record did not agree with the conclusion reached by the Enquiry Officer and after setting out reasons for disagreement, he sent a show cause notice to Petitioner on 5-2-96 to the Petitioner and called for his explanation. After receiving the explanation, the Disciplinary Authority after considering the entire records passed an order on 7-6-97 dismissing the Petitioner from service. Even the Appellate Authority has upheld the orders of Disciplinary Authority. The said orders are valid, legal and just. The allegation that he has registered marriage with Ms. Nirmala under her compulsion and pressure is only after thought. Further, the allegation that NIPM rules and regulations was published only on 12-7-93 is not true. A mere statement that he is not aware of rules is only an after thought to escape from the misconduct. Ms. Nirmala, a co-employee who had entered into marriage with the Petitioner was suspended on 23-6-93 and she submitted her resignation on 8-6-95 and the same was accepted on 8-6-95 and she was relieved without prejudice on the part of Respondent to re-open the disciplinary proceedings in future. The family court order will not in any manner affects the action of the Petitioner, which is based on material records and own admission of the Petitioner. The decision of Respondent is based on facts of violation of conduct rules by the Petitioner. The Petitioner has entered into illegal marriage on 11-11-92 with Ms. Nirmala and the relationship of Petitioner is illegal and against conduct rules of Respondent and this fact is proved beyond doubt and therefore, the dismissal order passed by authorities are valid in law. The orders of Disciplinary Authority and Appellate Authority are valid and legal and within their respective jurisdiction and therefore, no interference is called for under section 11A of I.D. Act, when especially the charges are serious in nature. Further, in this case the Petitioner has received his retirement benefits even three years before raising the industrial dispute. Therefore, on the ground of long delay in raising this dispute, he is not entitled to any relief. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. Again the Petitioner in his reply statement contended that the Respondent/Management is an industry as defined under section 2(s) of Industrial

Disputes Act, 1947. The Petitioner was always under bonafide impression that only standing orders 1989 was governing him and he was totally unaware of NIPM rules and regulations. Immediately after his illegal termination, the Petitioner has given so many representations with regard to his reinstatement, but the management only made him to run from pillar to post but denied his reinstatement and that is why the Petitioner had to approach conciliating authority only on 20-8-2001. Further, only on 12-7-93 the management displayed in notice board that the copy of rules and regulations are available in library. Therefore, the contention of Respondent that rules and regulations are kept for reference in library is totally incorrect. The Petitioner was not gainfully employed anywhere. Therefore, he prays that an award may be passed in his favour.

6. In these circumstances, the point for any consideration are—

- (i) "Whether the order of dismissal of Petitioner by Respondent/Management is legal and justified?"
- (ii) "To what relief, the Petitioner is entitled?"

Point No. 1 :—

7. In this case, the Petitioner contended that he joined the Respondent/Management as a driver in the year 1986 and he was placed under suspension on the allegation of charges on 23-6-93 and he was charge sheeted on 3-12-93. Though he has submitted an explanation, the Respondent/Management has not accepted the said explanation and the domestic enquiry was conducted. The Enquiry Officer gave a report on 20-12-95 holding that petitioner was not guilty of the charges framed against him. But, the Disciplinary Authority found him guilty of charges and awarded the punishment of termination from service. Though, he has registered marriage with Ms. Nirmala, a co-employee on 11-11-1992, it was only under her compulsion and pressure and the said Ms. Nirmala was aware that he is already married and a spouse living and even though the Respondent NIPM rules and regulations was approved on 28-9-92, it was displayed in the notice board only on 12-7-93, when the Petitioner registered the marriage on 11-11-92, he was totally unaware of NIPM rules and regulations and if the Respondent/Management displayed the rules immediately, he would not have registered the marriage with Ms. Nirmala on any situation. He further contended that even assuming for argument sake, that NIPM rules apply to all, it will equally apply to co-employee Ms. Nirmala also. But, the Respondent/Management has not given any punishment to her, while the same charge was framed against her. It is only a discrimination. Further, even though the marriage was registered with Ms. Nirmala, a co-employee, the Family Court had declared the marriage as null and void and therefore, he did not enter into any civil marriage and he is not guilty of any offence or charges. With regard to suppression of information, though the NIPM rules was

alleged to have been approved on 28-9-92, the Petitioner was asked to make a declaration only on 15-6-93 and therefore, he was not guilty of suppression of any information of his marriage. Further, the charge with regard to illicit relationship with a co-employee namely Ms. Nirmala, there is no evidence to prove this allegation. Just because the marriage was registered with Ms. Nirmala, it cannot be said that he had illicit relationship with her. Further, though the Disciplinary Authority has disagreed with the findings given by the Enquiry Officer, he has not stated any valid reason with regard to his disagreement with the enquiry report and the Petitioner has not been afforded with any opportunity to deny the reasons given by the Disciplinary Authority. Further, in the domestic enquiry, the Petitioner's request for assistance of an advocate was denied by the Disciplinary Authority and without knowing his view on the Disciplinary Authority's disagreement with enquiry report, the order of punishment was imposed on him and therefore, it is not valid in law. Since after the order of dismissal, the Petitioner has given representation to the higher forums, there is no delay in raising the dispute before this Tribunal. The Appellate Authority has also not applied his mind and hence, the conclusion of the Disciplinary Authority and Appellate Authority are perverse. Any how, under section 11A of Industrial Disputes Act, 1947, this Tribunal has got every power to examine the evidence and reduce the punishment given by the domestic authority. In this case, the Petitioner is an ex-serviceman. Further, he was given performance award by the Respondent/Management in the year 1991 and 1994 and therefore, he prays that the order of dismissal passed by the authorities is to be set aside.

8. The Petitioner has examined himself in this case as WW1 and he produced 21 documents, which are marked as Ex. W1 to W21. On the side of the II Party/Management one Mr. Rajendran was examined as MW1 and 38 documents are marked as Ex. M1 to M38.

9. As against this, the Respondent contended that the Petitioner has not taken any stand or any allegation in the Claim Statement or in the pleadings before the conciliation officer that he was not allowed to have assistance of advocate in the enquiry. Even in the Claim Statement, amended Claim Statement and also reply statement, he did not take this plea. On the other hand, in the Counter Statement of the Respondent, it is clearly and categorically stated that the Enquiry Officer gave full opportunity to the Petitioner and the Petitioner availed of all the opportunities extended to him. This statement was also not denied by the Petitioner in the reply statement and also in the additional Claim Statement. Therefore, without raising the plea, the learned counsel for the Petitioner has raised this plea only at the time of argument for the first time and therefore, it cannot be entertained. In this case, in the domestic enquiry, the Petitioner was allowed to have

assistance of a co-employee Mr. Varadharajulu in the enquiry and he himself and the defence representative participated in the enquiry proceedings fully and he has never made any objection that he was not allowed to have an assistance of advocate and therefore, this argument that there is procedural lapse on the part of domestic enquiry is not at all valid in law and it is only an after thought.

10. But, as against this the learned counsel for the Petitioner contended that the High Court of Madras has observed in 2001 3LLJ 1236 GUNASAMBANDAM Vs. TAMIL NADU CEMENTS CORPORATION LTD. CHENNAI that *"once the employer has chosen to appoint a Presenting Officer who is a law graduate, it cannot be in the mouth of Respondents to say that the Petitioner is not an illiterate and can defend himself. When the employer is represented by a Presenting Officer who is a law graduate the request of the Petitioner for assistance of a lawyer ought to have been accepted"* and relying on this decision, the learned counsel for the Petitioner argued that in this case the Presenting Officer of the Respondent/Management is a law graduate and the Petitioner has requested the assistance of a lawyer, but it was rejected on the ground that the Presenting Officer is not a practicing advocate, though he is a law graduate and therefore, the Petitioner is not entitled to assistance of a lawyer in the domestic enquiry. But, in the above decision, the High Court has clearly stated that *"when the question of violation of principles of natural justice is pleaded by the Petitioner, this court has to consider as to whether a benefit availed by the employer by appointing a Presenting Officer could be refused to the Petitioner on the ground that the Petitioner is not an illiterate person and such contention cannot be accepted in view of the fact that once the employer had chosen to appoint the Presenting Officer who is a law graduate, it cannot lie in the mouth of the Respondents to say that the Petitioner is not an illiterate and can defend his case by himself. When the Petitioner is pitted against a legally trained person, only consideration is as to whether he is entitled to an assistance of a lawyer or not and not whether the Petitioner himself is a trained person to conduct the enquiry. The principles of natural justice requires the request of the Petitioner for assistance of a lawyer ought to have been accepted by the Respondents"* and therefore, from Ex. M20 to M22 in page 46, it is clear that the Respondent/Management want only refused the request of the Petitioner for an assistance of a lawyer. Under such circumstances, this Tribunal can come to a safe conclusion that the principles of natural justice has not been followed in the domestic enquiry. Even though, I find some force in the contention of the learned counsel for the Petitioner, I find the Petitioner either before the conciliation officer or before this Tribunal has not raised this plea in his contention and therefore, this argument was only advanced as an afterthought by the learned counsel for the Petitioner.

Under such circumstances, I am not inclined to accept the contention of the learned counsel for the Petitioner.

11. Then the learned counsel for the Petitioner has attacked the procedural lapses on the part of domestic enquiry. He relied on rulings of Three Member judgement of Supreme Court in PUNJAB NATIONAL BANK AND OTHERS Vs. KUNJ BEHARI MISRA AND ANOTHER wherein, it has clearly held that *"whenever the Disciplinary Authority disagrees with the enquiry authority or any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and given to the delinquent officer an opportunity to represent before it records its findings. The report of the Enquiry Officer containing its finding will have to be conveyed and the delinquent officer will have an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice as we have already observed require the authority which has to take a final decision and can impose a penalty to give an opportunity to the officer charged of misconduct to file a representation before the Disciplinary Authority records its findings on the charges framed against the officer."* Further, the said decision was also followed in 1997 7 SCC 739 YOHINATH D. BAGDE Vs. STATE OF MAHARASHTRA AND ANOTHER, wherein the Supreme Court again reiterated the decision rendered in KUNJ BEHARI MISHRA's case and held that *"the delinquent employee has right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him, but also at the stage at which those findings were considered by the Disciplinary Authority and later, namely the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent employee and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings, and the formation of opinion should be tentative and not final. It is at this stage the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is inconsonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charge against him and given a reasonable opportunity of being heard in respect of those charges"* and therefore, in this case, though the Disciplinary Authority has disagreed with the findings given by the Enquiry Officer and though he has given an opportunity to the Petitioner for personal hearing, he has not given any opportunity to the Petitioner before he comes to a conclusion in the matter and therefore,

the procedure followed by the Disciplinary Authority is not valid in law and due to this irregularity, the order impugned passed by the Disciplinary Authority is to be set aside.

12. But, as against this, the learned counsel for the Respondent contended that it is false to allege that there is a procedural irregularity and he relied on the rulings reported in 2000 2 LLJ 250 AIR INDIA LTD. Vs. M. YOGESHWAR RAJ wherein, the Supreme Court has held that "in an enquiry, the Enquiry Committee found the Petitioner guilty of the charge framed against him, but the Disciplinary Authority has come to a different conclusion and stated that the charges framed against him have been established and tend to hold that guilty of acts of misconduct and the Disciplinary Authority further stated before coming to such conclusion that he has given an opportunity for submitting his reply as to why he should not be held guilty of those charges and has given time to submit his explanation and further stated in case, if he fails to submit any satisfactory explanation within the stipulated period of time, the Disciplinary Authority proposed to award him the punishment of dismissal from the services of the company and so on." Immediately, the delinquent officer namely the Petitioner has preferred a Writ Petition and the High Court have stayed the matter in which the Supreme Court has held that "in the case, before us, apart from the fact that no final order has been passed by the Disciplinary Authority, the substance of the impugned notice in no way differs from that of the first notice" and therefore, the Supreme Court set aside the order of High Court with regard to stay of operation of show cause notice. The learned counsel for the Respondent further relied on the rulings reported in 2000 ILLJ 671 NAGENDER CH. Vs. REGISTRAR (MANAGEMENT) HIGH COURT OF A.P. AND ANOTHER, wherein, the Enquiry Officer who was appointed to enquiry into the charges exonerated the delinquent employee, on the other hand, the Disciplinary Authority disagreed with the same and concluded that the charges 1 to 4 framed against the delinquent employee were proved and he has imposed the penalty after issuing show cause notice. When the matter was questioned before the High Court, the Division bench of the High Court of Andhra Pradesh has held that "we do not think the notice suffers from any legal infirmity. In the show cause notice firstly it is stated that the reasons furnished by the Enquiry Officer are neither consistent nor correct. Secondly it is stated that there is enough and adequate evidence showing that the Petitioner is guilty of all the charges. Not only disagreement of the Disciplinary Authority with the Enquiry Officer is recorded, it is also indicated that the evidence on record is sufficient to find the Petitioner guilty of the charges.We do not therefore, find that any prejudice was caused to the Petitioner nor can we find fault with the decision of the Disciplinary Authority in the light of law laid down by the Supreme Court." Again,

the learned counsel for the Respondent relied on 2002 4 LLN 912 GC. AZEEMUDDIN Vs. HIGH COURT OF A.P. (Registrar Vigilance) and ANOTHER, wherein, in a similar situation, the High Court of Andhra Pradesh has held that "the contention of the learned counsel for the Petitioner is that composite notice dated 26-5-92 issued by High Court disagreeing with the findings of the Enquiry Officer and proposing the penalty of removal from service as a disciplinary measure is violative of principles of natural justice.The reason flowing from the argument of learned counsel for the Petitioner is totally misconceived. Suffice it to state that the findings recorded by the High Court in the notice dated 26-5-92 and the punishment of dismissal from service proposed as a disciplinary measure were only provisional/tentative and not final" and therefore, held that notices issued by the High Court is valid. Relying on all these judgements, learned counsel for the Respondent argued that though in KUNJ BEHARI MISRA's case, the Supreme Court has come to a conclusion that before issuing 2nd show cause notice, an opportunity must be given to the Petitioner while disagreeing with the enquiry report, in the subsequent decisions, the High Courts and Supreme Court have held that even the 2nd show cause notice is enough and therefore, in this case, the procedure followed by the respondent/Management cannot be questioned and no deviation from principles of natural justice in this case can be claimed.

13. But, though I find some force in the contention of the learned counsel for the Respondent, in this case, when we peruse the 2nd notice issued by the Respondent, though an opportunity was given to the Petitioner, this opportunity was given only to represent with regard to his proposed punishment and not with regard to the findings of the disciplinary Authority and as such, I find the ratio of KUNJ BEHARI MISRA's case and YOGINATH D. BAGDE's case will squarely apply to the facts of this case and therefore, I find there is irregularity in the procedure followed by the Disciplinary Authority.

14. Then, again the learned counsel for the Petitioner argued that NIPM rules was amended and approved on 28-9-92, but no notice was issued under section 9A of the Act, which affects the conditions of service of the workmen. Since it was an introduction of new rules and discipline which alter the existing rules as provided in the Standing Orders, such change in the service conditions of workman is to be effected as a pre-condition of notice under section 9A and in this case, without complying with such pre-condition of notice, the proposed change was made and therefore, it would not be legally computed operation as alleged by the Respondent/Management. Further, he relied on the rulings reported in 1997 2 LLJ 1043 TAMIL NADU ELECTRICITY BOARD Vs. CENTRAL GOVT. ORGANISATION OF TAMIL NADU EMPLOYEES AND ANOTHER, wherein

the Division Bench of Madras High Court has held that "we are in conformity with the view of learned Single Judge that service regulations cannot be replaced by a circular or memo introducing series of misconducts not enumerated in the Standing Orders. So as to ensure safeguard to the workmen they should know what are the service conditions and what constitutes misconduct at the time of entry into service. In the Standing Orders as many as 36 misconducts are enumerated. To read something else to that and it can be done only by way of resorting to amendment in the certified standing orders under section 10 of Act which gives the ample opportunity for all the employees to have their say and to take the matter to finality in the form of judicial review. What is not contemplated as service condition, when entered into service cannot be upset or reintroduced by way of a memorandum which has no statutory value, unless it assumes a statutory significance by way of an amendment in the manner provided by law." Further, the learned counsel for the Petitioner relied on the rulings reported in AIR 1951 SCC 467 HARLA Vs. STATE OF RAJASTHAN, wherein the Supreme Court has held that "it would be against the principles of natural justice to permit subjects of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural Justice requires that before a law can become operative it must be promulgated or published or it must be broadcast in some recognisable way so that all men may know what it is or at the very least there must be some special rules or regulations through which such knowledge can be acquired with the exercise of due and reasonable diligence." The learned counsel for the Petitioner further argued that the Petitioner entered into service of the Respondent in the year 1986 and that time only standing order alone was then and though the Respondent contended that NIPM rules and regulations were approved on 28-9-92 it was only displayed in the notice board on 12-7-93 stating that the workmen can go through the the rules and regulations kept in library on 12-7-93. Under such circumstances, the Petitioner was totally unaware of the NIPM rules, when he has entered into the marriage with co-employee Ms. Nirmala. Under such circumstances, it cannot be said that the Petitioner must have the knowledge about the NIPM rules on the date of alleged marriage and the introduction of new rule was not informed to the Petitioner by any valid means and therefore, even on the merits of the case, it cannot be said that the Petitioner's 2nd marriage is a grave misconduct as per rules.

15. But, as against this the learned counsel for the Respondent contended that the Petitioner was appointed as a driver by an order dated 8-11-86, a copy of which is marked as Ex. M1. By a letter dated 8-11-86, as copy of which is marked as Ex. M2, he accepted all the conditions.

One of the conditions in that is he will be governed by rules and regulations of Respondent institute as framed by the governing body and amended from time to time. In this case, NIPM rules and regulations were approved by governing body on 28-9-92 and Rule 1 of Chapter 2 provides that 'rules shall apply to every employee of the institute whether he was in service on the date of these rules were approved or entered into service thereafter.' Therefore, the said rules and regulations came into force from 28-9-92 onwards Ex. W6 shows that some employees wanted copies of NIPM rules, hence notice was exhibited in the notice board that it will be available in the library and therefore, the Petitioner cannot take advantage of this notice and argue that notice of amendment in rules and regulations was known to the Petitioner only from 12-1-93. Further, he argued that Rule XIX Chapter 9 of NIPM rules provides restrictions regarding 2nd marriage. The Petitioner has given declaration about his family under Ex. M3 in which he gave his wife's name as Rajammal and therefore, when his first wife is alive, he registered the 2nd marriage on 11-11-92. As soon as the respondent came to know the fact, issued a letter dated 15-6-93 to him and Ms. Nirmala under Ex. M5 and M6 and both of them have given reply admitting the 2nd marriage under Ex. M11 and M12 respectively. Hence, the charge sheet was issued to him and enquiry was conducted and the Disciplinary Authority not accepting the findings of the Enquiry Officer has sent show cause notice under Ex. M33 and after obtaining his explanation passed the dismissal order dated 2-6-97 and therefore, it cannot be said that the order passed by the Disciplinary Authority is devoid of procedural irregularity. Though the Petitioner has raised contention in the claim statement that his 2nd marriage with Ms. Nirmala on 11-11-92 was under compulsion and pressure only, and she well aware that he had a spouse living during the time of registration, he has not raised this plea before any forum either in Family Court or before Disciplinary Authority. Even in the claim statement, Petitioner has not taken the stand that the marriage was registered under compulsion and pressure. The co-employee Ms. Nirmala has filed a petition before the Family Court and in that petition she has stated that the Petitioner herein, had persuaded her to marry him. As against this contention, the Petitioner has not taken any stand in the written statement and therefore, this plea taken at the time of argument before to Tribunal is only an afterthought. Though the Petitioner has stated that he has not entered into any civil marriage, the marriage taken between the Petitioner and Ms. Nirmala is only under Hindu Marriage Act and further the admissions made by the Petitioner and also co-employee have clearly established the fact that between them actually civil marriage has taken place and then it was registered and only to escape from the charges, the Petitioner has taken this stand that no civil marriage was entered into between him and Ms. Nirmala. The Respondent advocate further

argued that though the Family Court set aside the marriage by an order dated 11-1-94 and though the Petitioner contended that there is no legal marriage since the enquiry conducted by the respondent is only a domestic enquiry, documentary evidence and also oral evidence clearly shows that 2nd marriage was performed on 11-11-92 and when the memo was issued to the Petitioner, he has accepted the 2nd marriage in writing and the order of Family Court no way affects the departmental enquiry of the respondent and it does not wipe out the misconduct committed by the Petitioner. The allegation that Petitioner has not suppressed the material facts is also not a valid one because till he was asked to give explanation, he has not disclosed the 2nd marriage and as per rules and regulations of Respondent, it is a gross misconduct and therefore, the Petitioner's contention is not valid with regard to the contention of suppression of fact. Further, the misconduct committed by the Petitioner is an offence punishable under IPC and therefore, the claim is to be dismissed by this Tribunal. Again, the counsel for the Respondent contended that the NIPM is not an industry and it is only a training institute functioning at no profit basis and therefore, this claim against the respondent is not valid in law. Further, he contended that in this case, dismissal order was passed on 2-6-97 and the appeal was dismissed on 23-3-98, but the Petitioner raised the dispute only in the year 2001, which shows that the Petitioner did not raise the dispute in time and it is well settled by various decisions that if the dispute is not raised in time, then the concerned worker could not be given any relief. In this case, the Petitioner has kept quite for nearly more than three years and therefore, he cannot be allowed to argue that there is no delay on his part and hence, he is not entitled to any relief as prayed for by him. Further, the learned counsel for Respondent argued that since the Petitioner kept quite for three years, it is clearly proved that he was gainfully employed and maintaining two wives and therefore, he has no occasion to approach this Tribunal in time and thus, he is not entitled to any relief.

16. But, as against this the learned counsel for the Petitioner argued that though bigamous marriage is an offence under IPC only the aggrieved person can make complaint about the offence. In this case, the third party namely the respondent cannot question the same and as such, the respondent cannot raise the plea that it is an offence under IPC. Further, the Family Court has declared that marriage is null and void and under such circumstances, it cannot be held that a legal marriage has been taken place between the Petitioner and Ms. Nirmala. Though, it is alleged that three years have been passed after passing the order of dismissal, the Petitioner has given representations to higher forums and this fact was also not disputed by the respondent and further, in this case, the Respondent has not established the fact that the Petitioner was gainfully employed. Under such circumstances, the delay in this case cannot be said as a fatal to the claim of the Petitioner. Without considering the

past record of the Petitioner, without considering that he was promoted in the service to the higher post and he has been suitably awarded for his performance, the respondent management has given major punishment of dismissal against the Petitioner. The Petitioner who was an ex-serviceman and there was no complaint against the Petitioner with regard to his work. Under such circumstances, this Tribunal has to come to a conclusion, in view of the procedural irregularity and in view of the fact that the order passed by the Disciplinary Authority is not valid, nor the orders passed by the authorities are to be set aside.

17. I find much force in the contention of the learned counsel for the Petitioner. Analysing the arguments advanced on either side and perusing the documents produced on either side, I find the procedure followed by the Disciplinary Authority is not valid and therefore, I find this point in favour of the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the petitioner is entitled ?

18. In view of my above findings that the order passed by the Disciplinary Authority and Appellate Authority are to be set aside, I find the Petitioner is entitled to the prayer of reinstatement. But, at the same time, since the Petitioner has not approached the Court immediately and he has raised this dispute only after three years, he is not entitled to any back wages. Therefore, I direct the Respondent/Management to reinstate the Petitioner Sri B. Kumar into service with continuity of service and other attendant benefits but without any back wages. No Costs.

19. Thus, the reference is answered accordingly.

(Distated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 13th July, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the I party/Workman : WW1 Sri B. Kumar
For the II Party/Management : MW1 Sri R. Rajendran

Documents Marked :—

For the I party/Workman :

Ex. No.	Date	Description
W1		Nil Xerox copy of the photo of the notice board display
W2	16-05-89	Xerox copy of the circular issued by FAO to all drivers
W3	13-06-91	Xerox copy of the memo issued to Petitioner
W4	03-12-93	Xerox copy of the charge sheet and show cause notice
W5	25-05-89	Xerox copy of the order issued by Administrative Officer to drivers
W6	12-07-93	Xerox copy of the photo of notice board display.

W7	Nil	Extract of NIPM rules and regulations
W8	11-01-94	Xerox copy of the order and decree of Family Court
W9	Nil	Xerox copy of the enquiry proceedings
W10	11-12-95	Xerox copy of the defence statement of Petitioner
W11	20-12-95	Xerox copy of the letter from Enquiry Officer to Respondent
W12	20-12-95	Xerox copy of the findings of the Enquiry Officer
W13	02-06-97	Xerox copy of the order of Disciplinary Authority
W14	11-06-97	Xerox copy of the letter from Petitioner to Respondent
W15	23-03-98	Xerox copy of the order of Appellate Authority
W16	04-07-02	Xerox copy of the letter from Petitioner to Minister of Shipping
W17	20-08-01	Xerox copy of the 2A petition filed by Petitioner
W18	17-09-01	Xerox copy of the reply filed by Respondent before Assistant Labour Commissioner (Central)
W19	28-09-01	Xerox copy of the reply statement filed by Petitioner
W20	31-05-84	Xerox copy of the service certificate of Petitioner
W21	Jan-Dec.04	STCW course schedule manual

For the II party/Management :

Ex. No. Date Description

M1	08-11-86	Xerox copy of the order of appointment issued to Petitioner
M2	08-11-96	Xerox copy of the letter from Petitioner to Respondent
M3	08-11-96	Xerox copy of the declaration given by Petitioner
M4	11-11-92	Xerox copy of the marriage certificate
M5	15-06-93	Xerox copy of the Respondent's letter to Petitioner
M6	16-06-93	Xerox copy of the letter from Respondent to Ms. Nirmala
M7	16-06-93	Xerox copy of the reply given by the Petitioner
M8	16-06-93	Xerox copy of the reply given by Ms. Nirmala
M9	16-06-93	Xerox copy of the letter from Respondent to Petitioner
M10	16-06-93	Xerox copy of the letter from Respondent to Ms. Nirmala
M11	16-06-93	Xerox copy of the Petitioner's reply

M12	16-06-93	Xerox copy of the reply given by Ms. Nirmala
M13	16-06-93	Xerox copy of the reply given by Petitioner
M14	16-06-93	Xerox copy of the reply given by Ms. Nirmala
M15	23-06-93	Xerox copy of the suspension order issued to Petitioner
M16	23-06-93	Xerox copy of the suspension order issued to Ms. Nirmala
M17	03-12-93	Xerox copy of the charge sheet issued to Petitioner
M18	03-12-93	Xerox copy of the charge sheet issued to Ms. Nirmala
M19	08-06-95	Xerox copy of the resignation letter of Ms. Nirmala
M20	31-10-95	Xerox copy of the appointment letter of Enquiry Officer
M21	31-10-95	Xerox copy of the appointment letter of Presenting Officer
M22	15-11-95	Xerox copy of the enquiry proceedings
M23	Nil	Xerox copy of the summing up by Presenting Officer
M24	20-12-95	Xerox copy of the findings
M25	14-02-96	Xerox copy of the explanation given by Petitioner
M26	02-06-97	Xerox copy of the order of dismissal issued to Petitioner
M27	09-07-97	Xerox copy of the letter of acceptance of resignation of Ms. Nirmala
M28	09-07-97	Xerox copy of the letter of Respondent settling the dues of Ms. Nirmala
M29	Nil	Xerox copy of the receipt issued by Ms. Nirmala
M30	25-06-97	Xerox copy of the letter for full & final settlement of Petitioner
M31	25-06-97	Xerox copy of the letter for full and final settlement of cheques
M32	23-03-98	Xerox copy of the appeal order
M33	05-02-96	Xerox copy of the show-cause notice
M34	11-01-94	Xerox copy of the judgement of Family Court
M35	02-04-94	Xerox copy of the explanation given by Ms. Nirmala
M36	05-04-94	Xerox copy of the letter of Respondent to Ms. Nirmala
M37	02-04-95	Xerox copy of the letter of Respondent to Ms. Nirmala
M38	Nil	Xerox copy of the letter from Respondent to Ms. Nirmala before Family Court.

नई दिल्ली, 1 सितम्बर, 2004

का. आ. 2391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दन रेलवे के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, लखनऊ के पंचाट (संदर्भ संख्या आई. डी. नं. 57/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-08-2004 को प्राप्त हुआ था।

[सं. एल-41012/170/1999-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st September, 2004

S.O. 2391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I. D. No.57/2001) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 31-08-2004.

[No. L-41012/170/1999-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT AT LUCKNOW

PRESENT:

Shrikant Shukla : Presiding Officer
INDUSTRIAL DISPUTE No. 57/2001
Ref. No. : L-41012/170/1999-IR (B-I)
dated : 12th March, 2001

BETWEEN:

The Divisional Organization Secretary,
Uttar Railway Karmchari Union,
283/63, Kha Garhi Kanaora,
(Premwati Nagar),
PO-Manaknagar,
Lucknow (U.P.)-226001.

(In the matter of Ram Bilas Ram)

AND

1. The D.M.E. (P),
Northern Railway, Hazratganj,
Lucknow (U.P.)-226001.
2. The D.P.O.,
Northern Railway, Hazratganj,
Lucknow (U.P.)-226001.

AWARD

The Government of India, Ministry of Labour has referred following dispute to the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Lucknow for adjudication.

"Whether the action of the management of Northern Railway in not promoting Shri Ram Bilas Ram Shunter to the post of Driver in the year 1991-92 is justified? If not, what relief he is entitled?"

2. The Divisional Organising Secretary, Uttar Railway Karmchari Union, Lucknow has filed the statement of claim alleging therein that Sh. Mobin Ahmad and Shri Raj Kishore were junior to Ram Bilas Ram on the post of fire Man Gr-A, but they were promoted in the year 1991 and 1992 whereas he has not been promoted as Driver goods although he was schedule caste.

The opposite party has filed the written statement alleging therein that the claim of the trade union is incorrect. Mobin Ahmad was promoted as driver goods on 17-6-95 and Raj Kishore was promoted on 1-5-96. The opposite party has also pleaded that the workman was previously posted as foreman, a post which is equivalent to Diesel Assistant post and the Railway Administration issued a seniority list on 7-7-93 of Diesel Assistant post in which his name was in serial No. 294 and Mobin Ahmad at serial No. 75 along with Raj Kishore at serial No. 78. It is further stated in the written statement that for the promotion of Shunter and Driver the departmental course P-17 is compulsory for every workman who wants to be promoted for the post of Driver. It is also stated that Ram Bilas Ram along with two other named Raj Kishore and Mobin Ahmad were sent to Chandausi for passing the P-17 course many times but they passed and completed the course in following manner:

1. Raj Kishore passed on 28-4-92
2. Mobin Ahmad passed on 21-5-91
3. Ram Bilas Ram passed on 1-1-94

Accordingly the above mentioned person were promoted to the post of Shunter on 24-5-93, 3-5-93 and 16-5-96 respectively. The workman Raj Kishore, Mobin Ahmad and Ram Bilas Ram were again sent to Chandausi for completing the course for the promotion of Driver goods and they passed the course in following manner:

1. Mobin Ahmad qualified in year 1994
2. Raj Kishore qualified in year 1995
3. Ram Bilas Ram qualified in year 1995

The above persons were promoted to the post of Driver goods on 17-6-95, 1-5-96 and 4-9-98 respectively. It is alleged that post of driver is very important for the point of safety so without passing the course and suitability no one can be promoted for the same. Moreover the railway administration promoted the workman when he completed the course and found suitable for the post of Driver goods and no junior to him is promoted without qualifying the course and found suitable by administration for the purposes of safety of railway as well as public.

The workman has filed seniority list dated 29-9-89. Annexure-I to his statement of claim, the affidavit of Ram

Bilas Ram and the photocopy of application of Ram Bilas Ram dt. 30-8-93.

Whereas the opposite party has filed the Affidavit of Sh. N.K. Verma, ADME (P), NR, DRM office, Hazratganj, Lucknow and has filed following documents :

1. Provisional seniority list of First Fire Man and Diesel Assistant, dt. 7-7-93;
2. Provisional seniority list of Driver goods dt. 3-9-2001;
3. Provisional seniority list of Driver goods dt. 2-1-2001; and
4. Training programmes of various courses have also been filed.

Railway has also filed the Railways letter No. 847-E/E-5/86 dt. 28-3-90 of Sr. DPO, NR, Lucknow in respect of change of seniority of Mohin Ahmad and 6 other persons along with the copy of the judgement passed in OA No. 485/86, 484/86, 483/86, 482/86 and 481/86 and TA No. 162/87 and 158/87.

Ram Bilas Ram has been cross-examined by the representative of the opposite party and Sh. N.K. Verma who has filed affidavit on behalf of opposite party has been cross-examined by the workman.

I have heard learned representative of parties and perused the evidence on record.

Mobin Ahmad, Mo. Nizam, Raj Kishore, Shital Prasad, Naresh Kumar, Shri Ram & others have filed various cases before Central Administrative Tribunal, Allahabad, the facts of this case were that the applicant was originally appointed as a Khallasi in the year 1971. In 1975 he requested for a change of his cadre as a cleaner which is a lowest post in the running staff category but which is equal in status and emoluments to that of a Khallasi. This request was exceeded to by an order dated 19-4-1979. This order covered nine persons out of which the petitioner was one of them and it stated that the staff having passed the medical examination have been re-designated as Loco, Cleaner at their own request and are posted to the shed noted against each. They will also be assigned seniority as per existing rules. After the issue of this order the seniority of the applicant could not be fixed in the new cadre and when he came to know that he had been made junior to certain persons who were enlisted for appointment in a panel of Loco Cleaners formed in the year 1978, he represented to the authorities for correcting his seniority. On 10-6-1980 the respondents decided vide their Memorandum No. 941 D/1-5/Change of Category/71 that the persons borne on the panel of Loco Cleaner formed on 30-9-1978, who have not been issued regular appointment letter cannot be assigned seniority above the applicant. Thus persons who had become Loco Cleaner from Fitter Khallasis by change of their category were assigned seniority above those borne on the panel of Loco Cleaner formed on 30-9-1978, who had not been issued regular appointment letters. The applicant was

thereafter promoted on seniority-cum-suitability basis to the post of Second Fireman by an order issued on 7-3-1981. This order stated that the promotions were purely temporary and promotees are liable to be replaced by their seniors and will not confer upon them any right for future promotion. They were also subject to the eligibility test before this promotion. On 13-6-81 the applicant was given an order saying that he has been reverted from the post of Second Fireman to the post of Cleaner. No reason was advised to him and therefore, he represented against the same. When he found no response to his representation he filed a Writ Petition No. 2849 of 1981 against the orders of reversion in the Lucknow Bench of the High Court of judicature at Allahabad and the High Court stayed the order of reversion of the petitioner. But this petition was dismissed on 26-11-1981 because the petitioner could not produce any reversion order. Some other colleagues of the petitioner who were also similarly reverted filed another Writ Petition No. 3086 of 1981 against their orders of reversion and a stay was granted against the order. On receipt of the written order of reversion the petitioner also filed another Writ Petition No. 5895 of 1981 in the High Court of judicature at Allahabad, Lucknow Bench, Lucknow. A stay was granted in his case as well on 8-12-1981 but the stay order was vacated on 4-5-1982 whereupon the petitioner filed a Special Leave Petition No. 16957 of 1982 in the Hon'ble Supreme Court and obtained an interim stay order dated 11-6-1982 against his reversion. His services were thereafter regularised in the grade of Second Fireman and he became entitled to further promotion as First Fireman. On 27-2-1986 he was promoted as First Fireman on *ad-hoc* basis subject to the approval of his seniority by the HQ office. The petitioner's case is that when he resumed duty after change of his category as a Loco Cleaner on 19-4-1979 name of the persons who had been empanelled in 1978 had been given an offer of appointment and, therefore, he should have ranked senior to all those empanelled persons. In July, 1986 an order was issued by the respondents reverting the petitioner from the officiating post of First Fireman to the grade of Second Fireman. The petitioner alleges that this was done under the undue influence and pressure of the Northern Railway Men's Union, which is a rival Union to the one to which he belongs. This order was, however, cancelled and the petitioner's promotion as First Fireman continued, by another order passed on 14-7-1986. However, another order dated 30-7-1986 and 18-8-1986 was again passed reverting the petitioner from the post of First Fireman to that of Second Fireman and thereby cancelling the orders of 14-7-1986 and restoring the order of reversion issued on 10-7-1986. The petitioner claims that the order dated 18-8-1986, which he was impugned, has not been served upon him so far. But he has placed a copy of the same order as Annexure XVIII to the petition and persons who were appointed on the basis of panel formed in the year 1978 were promoted in officiating capacity. The petitioner has

challenged this order as being arbitrary, passed behind the back of the petitioner and without notice to him. According to him a decision once taken regarding the promotion and seniority cannot be reviewed, reconsidered and recalled arbitrary and without any reason. He has, therefore, sought for issued of a suitable order setting aside the impugned order dated 30-7-1986 issued by the Chief Personnel Officer and impugned order dated 18-8-1986 issued by the Senior Divisional Personnel Officer and the order dated 18-7-1986 passed by the Chief Personnel Officer. He has also prayed for issue of a direction to promote the petitioner on regular and substantive basis against clear vacancies in the grade of First Firemen on the basis of seniority. The Hon'ble Central Administrative Tribunal ordered that the seniority of petitioner and those similarly situated along with him in other petitioners will be determined from the date they took over and the seniority of the empanelled persons of the 1978 panel of casual labour/substitutes will only be determined from the date they were put to work as Loco Cleaners, i.e. from the date of their appointment and not from the date of their empanelment. All the petitions are disposed of accordingly. The judgement was passed on 30-11-1987.

On 28-3-90 the Sr. DPO revised the seniority of Mobin Ahmad, Raj Kishore and 5 others. It is noteworthy that the seniority list, which the trade union has relied in the present case, is dated 29-9-89. Another seniority list came up thereafter on 7-7-93. In which Mobin Ahmed was at serial No. 75, Raj Kishore at serial No. 78, whereas Ram Bilas Ram was at serial No. 294. In these circumstances it cannot be held that Mobin Ahmad and Raj Kishore were not senior to Ram Bilas Ram although in the present case is not for determination that seniority. The issue referred to this Tribunal is not for determination of the seniority of Ram Bilas Ram with that of Mobin Ahmad and Raj Kishore.

It is also noteworthy that for shunter category 20 working days training is required in P-17 course and for driver it is 23 days working training is required in P-17 A and unless and until one does not pass the test prescribed cannot become shunter or driver.

According to Ram Bilas Ram he has undergone the course from 14-10-93 to 1-1-94 and he became shunter on 16-5-96. He has also admitted that Mobin Ahmad and Raj Kishore became shunter earlier. He also admitted that Mobin Ahmad and Raj Kishore went through P-17 course prior to him. In the above circumstances the workman on his own admission cannot become a driver.

The worker was promoted, as shunter on 16-5-96, therefore, there was no occasion for him to be promoted from shunter to driver.

The case of the worker is that Sh. Mobin Ahmad and Sh. Raj Kishore were promoted in the year 1991-92 and therefore, he should also be promoted as driver w.e.f. 1991-92 on the ground that Mobin Ahmad and Raj Kishore were junior to him.

Mobin Ahmad became Driver goods on 17-6-95 and Raj Kishore became Driver goods on 1-5-96 therefore, there is no occasion for promotion of Ram Bilas Ram in the year 91-92 and the action of the management of Northern Railway in not promoting Ram Bilas Ram Shunter to the post of Driver in the year 1991-92 is justified. The issue is therefore is answered in affirmative in favour of management or railways. The workman is not entitled to any relief. Award passed accordingly.

Lucknow.

23-8-2004

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 1 सितम्बर, 2004

का. आ. 2392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सदर्न रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, चेन्नई के पंचाट (संदर्भ संख्या आई. डी. नं. 8/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-08-2004 को प्राप्त हुआ था।

[सं. एल-41011/24/1993-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 1st September, 2004

S.O. 2392.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I. D. No. 8/2002) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Southern Railway and their workman, which was received by the Central Government on 31-08-2004.

[No. L-41011/24/1993-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT CHENNAI

Friday, the 16th July, 2004

PRESENT:

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE No. 8/2002

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Southern Railway and their workman).

BETWEEN:

The General Secretary, : I Party/Petitioner
Dakshin Railway Employees
Union, Madurai.

AND

The Divisional Railway Manager, : II Party/Management
Southern Railway, Madurai

Appearance :

for the workman : M/s. R. Rengaramanujam,
J. Muthukumaran &
S. Indumathi, Advocates

For the Management : Sri G. Kalyanasundaram,
Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L-41011/24/1993-IR(B-I) dated 07-01-2002 has referred the following industrial dispute to this Tribunal for adjudication :

“Whether the demand of the Union grant temporary status to 86 workers (as per list attached) by the Southern Railway is justified? If so, what relief the union concerned is entitled?

2. After the receipt of the reference, it was taken on file as ID. No. 8/2002 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner Union in the Claim statement are briefly as follows :—

The Petitioner Union raised an industrial dispute before Assistant Labour Commission (Central) Chennai regarding regularisation of the services of members of union, attached along with the claim petition, on completion of 120 days of service as per provisions of IREM. The Respondent/Management denies the claim on the ground that their services could not be regularised on completion of 120 days, since they are all project Casual Labourers. But, their services have been regularised on completion of five years of service. Since the conciliation ended in a failure, the Assistant Labour Commissioner (Central) sent a failure report to the Govt. But the Govt. by its order dated 3-3-94 declined to refer the dispute for adjudication. Therefore, the Petitioner Union filed a Write Petition before the High Court of Madras in W. P. No. 3117/95 challenging the order of Govt. and the High Court passed final order on 10-7-2001 directed to consider the matter afresh and thereafter, the Govt. have referred this dispute to this Tribunal. The members of union in the claim petition were employed under the control of Permanent Way Inspector, Sivaganga for revenue works namely track renewal works in Manamadurai-Trichy region. Since the renewal work is a regular revenue work and not a project work and therefore, these Casual Labourers were not paid any project allowance. All these 39 workmen were originally appointed to work under the control of Permanent Way Inspector, Sivaganga and were doing section work and later transferred some of them to work for relaying and recalling under his control from

July, 1975 in the reach of Trichy to Manamadurai and none of them were engaged in any of the project works sanctioned by the General Manager, which was declared as a project work. All along they have been engaged in maintenance work which are perennial in nature which were called revenue work or open line work. While so, about 105 Casual Labourers including 39 Casual Labourers mentioned in claim petition were served with the notice of termination which they have challenged before Supreme Court in W. P. (Civil) 5640/82 on the ground of violation of Section 25G as many of their juniors were still continuing in service. While the matter was taken up by the Supreme Court, the Respondent/Management assured through their counsel that all the Petitioners before Supreme Court will be absorbed and they are continuing in service and therefore, the above W.P. was dismissed without going into the merits of the case as nothing survives in the above W.P. Then the Petitioner Union raised the dispute before the Assistant Labour Commissioner (Central) in the year 1993 for grant of temporary status on completion of 120 days of service as that of their juniors and praying for regularisation of service and other monetary benefits that follows consequent on the grant of temporary status and it was referred for adjudication. Hence, for all these reasons, the Petitioner Union prays this Tribunal to direct the Respondent/Management to regularise the services of concerned workmen by granting temporary status on completion of 120 days on par with their juniors and consequently direct the respondent to pay all the other benefits.

4. As against this, the Respondent in the counter Statement alleged that the reference made by the Ministry of Labour and the claim made by the Petitioner is a stale, belated and time barred claim and therefore, it is not maintainable before this Tribunal. The Casual Labourers mentioned in the claim petition were engaged as only project Casual Labourers and not as revenue Casual Labourers or open line Casual Labourers and they were employed as fresh entrants for complete track renewal work which is classified as project between Tiruchirapalli and Manamadurai sections intermittently. On completion of 180 days continuous service, they have been granted 1/30th of monthly wages at the minimum scale of pay. The said Casual Labourers have been given temporary status and absorbed in service as regular Gangman as per Supreme Court directives in INTERPAL YADAV & OTHERS Vs. UOI. The said project Casual Labourers cannot make any claim at this date regarding temporary status on par with the open line Casual Labourers which is not maintainable. The Casual Labourers worked in Permanent Way Inspector, Sivaganga were termed as Revenue Casual Labourers or open line Casual Labourers and the Casual Labourers worked under Permanent Way Inspector, Special Works, Sivaganga were termed as project Casual Labourers. The conditions of Casual Labour employment are entirely different from each other. The

open line Casual Labour who had completed 120 days of continuous service were granted temporary status and project Casual Labourers who had completed 180 days of continuous service were granted only consolidated wages as per Rule 2001 of IREM. Therefore, the Petitioner Union cannot claim any temporary status on par with open line Casual Labourers for the persons mentioned in the Claim Statement. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In the additional Counter Statement filed by the Respondent, it is alleged that the Supreme Court has held in number of cases that onus to prove his claim is on the workman and the management cannot be called upon to disprove the claim, unless the workman has established it and a mere affidavit by workman is not enough to prove his claim. The persons mentioned in claim petition have been engaged as Casual Labourers in the years 1975 and 1976 and were given temporary status from 1981, 1982 and 1983 respectively. Therefore, the claim made by the Petitioner is stale, bleated and time barred claim.

6. As against this, the Petitioner Union in their rejoinder alleged that the Respondent cannot allege that this claim is stale, belated and time barred, since the High Court of Madras has gone into all objections of Respondent including the above and then only made the order for reference in W.P. 3117/95. Due to the Petitioner's persistence of claim for temporary status, the Respondent/Management's wrath was earned who ultimately served the Petitioners with illegal, arbitrary and discriminatory termination notice, in July, 1982 against which the Petitioners filed W.P. No. 5640/82 in Supreme Court, wherein the prayer for setting aside the termination notices inter-alia included the prayer for issue of mandamus by Supreme Court directing the Respondent to give temporary status to Petitioners. In view of the averment of Additional Solicitor General, the counsel for the Respondent, that the petitioners had already been absorbed by Respondent, the Supreme Court disposed of the Writ Petition on the ground that main issue of termination does not survive. Consequently, the other merits and contentions of both the parties were not decided. Consequently, only after the disposal of the case, the members of Petitioner Union were given temporary status by the Respondent only from the years 1981, 1982 and 1983 respectively and not from the dates in 1975 and 1976 when actually they have completed the 120 days of continuous service. The proposal for granting 1/30th scale of pay to establish that the member of Petitioner Union were project labourers have no relevance because these were not supported by any relevant rules therefore, the proposals are untenable, irrational and unsubstantiated. Even assuming without admitting that members of Petitioner Union worked for complete track renewal, which is not based on facts. Even assuming without admitting that they were engaged only in complete track renewal, this itself will not make them as project labourers. CTR by itself is not a project when not

declared so by the General Manager. The members of Petitioner Union worked as Casual Labourers who worked along with members of Petitioner Union annexed in the Claim Statement were done the same work or same type under the control of one and the same Permanent Way Inspector. For the reasons best known to the Respondent, their juniors were given on completion of 120 days continuous service, while leaving the members of Petitioner Union deliberately with mala fide intention. The members of Petitioner Union were Casual Labourers under Permanent Way Inspector, Special Works, Sivaganga is factually incorrect because, there was no such post and it is for the Respondent to prove the same. The Respondent having admitted before the Supreme Court that members of Petitioner Union have been absorbed implies that they have been absorbed in the manner prescribed under law and therefore, they are duty bound to have ensured the absorption as per their seniority and in any case not later than the date of absorption of their juniors. The Respondent who claims that the nature of work of members of Petitioner Union were not revenue work but project work, therefore, it is for the Respondent to produce all the relevant documents to prove the same. Hence, for all these reasons, the Petitioner Union prays that an award may be passed in their favour.

7. In these circumstances, the points for my consideration are —

- (i) "Whether the demand of Petitioner Union to grant temporary status to 86 workers as claimed by them is justified?"
- (ii) "To what relief, the Petitioner Union is entitled?"

Point No. 1 :—

8. The case of the Petitioner Union in this case is that the members of their Union who have been mentioned in the claim petition are to be regularised on completion of 120 days of continuous service as per the provisions of IREM, who were engaged in the years 1975 and 1976, but their services have been regularised on completion of five years of service. As against this, the Respondent contended that since the members of the Petitioner Union were engaged only as project Casual Labourers and not as revenue Casual Labourers or open line Casual Labourers, only on completion of 180 days of continuous service, they have been granted consolidated wages called as 1/30th of monthly wages at the minimum scale of pay and subsequently, they have been given temporary status and therefore, they are not entitled to the relief prayed for in this claim petition. Therefore, the main dispute in this case whether the members of the Petitioner Union were appointed as open line Casual Labourers or project Casual Labourers is to be decided.

9. The learned counsel for the Petitioner contended that even though the Respondent has not admitted that the members of Petitioner Union have been retrenched from service, in the counter affidavit before the High Court

in Writ Petition No. 3117/95 the Respondent/Management has admitted in paragraph 8 that employees including 39 Petitioners were terminated and the same was challenged by the Petitioner Union on behalf of the said labourers in W.P. No. 5640/82 and W. P. No. 10709/83 before Supreme Court. Therefore, this notice of termination is in accordance with Section 25 of Industrial Disputes Act, 1947. Since the Respondent has not contended that the workmen are contract labourers, the very fact of service of this notice and the affirmation of service of the same in terms of Industrial Disputes Act, 1947 clearly proves that the Petitioner/Workman are not project Casual Labourers. Secondly, it was held by the Supreme Court in *S. M. NILAJKAR AND OTHERS Vs. TELECOM DISTRICT MANAGER, KARNATAKA* 2003 4 SCC 27, wherein the Supreme Court has held that "*the engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project*" and it was also held that "*it is for the employer to prove the above said ingredients so as to attract the applicability of sub-clause (bb) aforesaid*" and in this case, the Respondent/Management has failed to prove that the concerned workmen were engaged only as project Casual Labourers and further MW 1 who was examined on behalf of the Respondent/Management in the cross examination has admitted that at the time of initial engagement, the Petitioner/Workmen were never communicated that they were engaged for a particular project and also at no time thereafter the Petitioners were expressly communicated that they were engaged for any particular project. Though there is an admission in cross examination of Petitioner that it was informed only in the year 1978 that they were engaged as project Casual Labourers, it will not amount to clear admission and they were engaged only as project Casual Labourers as mentioned in the rules of IREM. Further, the Respondent has not produced any document to show that these persons were engaged for a particular project. Though, the Respondent has relied on documents, Ex. M1, M2 and M3 which says definition of Casual Labourers open line and Casual Labourers project, wherein in the note, it is mentioned that project for this purpose should be taken as construction of new lines, major bridges, restoration of dismantled lines and other major important open line works like doubling, widening of tunnels, route relay interlocking, railway electrification etc. which are completed within a definite time limit and the General Manager/Head of Departments concerned in consultation with FA & CAO will decide whether a particular open line work is a project or not, and therefore, it is bounden duty of the Respondent/Management to show that the members of the Petitioner Union were appointed only as project Casual Labourers in a particular project and they were communicated with the same to the said persons. In this case, though the Respondent contended that the members of the Petitioner Union were engaged in project work re-laying of lines in Trichy to Manamadurai region, there is no valid document

to show that they were engaged in a project work that too after communicating the same to the members of the Petitioner Union. Under such circumstances, it cannot be said that the members of Petitioner Union were engaged for project work and they were project Casual Labourers.

11. But, as against this, learned counsel for the Respondent contended that the burden of proving the fact that they are entitled to the benefits of open line Casual Labourers is upon the Petitioner. On the other hand, the Petitioner has not produced any proof to show that they were engaged as open line Casual Labourers. The Respondent has marked Ex. M3 and M1 office orders issued to the concerned workmen and in that it can be seen that 1/30th scale of pay has been granted to the concerned workman on completion of 180 days of continuous service, which was admitted by WW1 during cross examination and it was signed by Permanent Way Inspector, Special Works, Sivaganga, who was the in-charge of the said work. From the said exhibits, it is clear that the Petitioners were engaged as project Casual Labourers. Further, in the cross examination of WW1, he also admitted that they have not challenged the Ex. M1 in any inform. Therefore, the Petitioner Union cannot claim any benefits pertaining to open line Casual Labourers at this distant point of time. Though the Petitioner Union alleged that the juniors of the members of Petitioner Union in the Claim Statement were given temporary status even prior to the persons and produced Ex. W2 and the members mentioned in Ex. W2 pertain to open line Casual Labourers working under Permanent Way Inspector, Sivaganga and not under Permanent Way Inspector, Sivaganga Special Works and therefore, the terms and conditions for open line Casual Labour and project Casual Labour are entirely different and cannot be equated and therefore, the Petitioner Union cannot claim any benefits based on Ex. W2.

12. But, on consideration of the entire evidence on record, I find though the Respondent/Management alleged that the members of Petitioner Union were appointed only as project Casual Labourers, as it was held by the Supreme Court in 2003 4 SCC 27, the burden of proving that the Petitioner were employed as project Casual Labourers is upon the employer namely the Respondent/Management and further, it is their duty to prove that the members of Petitioner Union engaged as workmen either as daily wager or project Casual Labour and it was brought to the notice of them even at the time of their appointment and since they have not satisfied this condition. I cannot come to a conclusion that the members of Petitioner Union were appointed as project Casual Labourers.

13. The next contention of the Respondent's advocate is that the claim of the Petitioner is state, belated and time barred as per the judgements reported in *STATE BANK OF INDORE Vs. GOVINDARAO* 1998 1 SLJ 177 and also 2001 (2) LLN 118 *BALBIR SINGH Vs. PUNJAB ROADWAYS & ANOTHER*. The approach to the Petitioner to Labour forum is a belated one and even though the law does not prescribe any time limit for the appropriate Govt.

to exercise its power, the reference itself should not be referred to this Tribunal, as it is barred by time. He further contended that in the present case, the Petitioners were engaged as Casual Labourers in the years 1975 and 1976 and admittedly attained the temporary status in the year 1981. But, the Petitioner Union has raised this issue before Assistant Labour Commissioner (Central) only in the year 1993 for grant of temporary status on completion of 120 days and it was referred to this Tribunal after 17 years. Therefore, it is not sustainable in law and therefore, the claim is to be dismissed as stale, belated and time barred claim.

14. For this, the learned counsel for the Petitioner argued that even in the year 1982, when the notice of termination was issued to the members of Petitioner Union, they have preferred a Writ Petition before the Supreme Court and in that the Additional Solicitor General has admitted before the Supreme Court without contesting the said W.P. and without pressing the denials and arguments in their counter affidavit that the workmen concerned had been absorbed and they all are continued to be in service. Only upon their admission in the year 1984, the Supreme Court has passed an order that "learned counsel for the Petitioners states that all the Petitioner had put in more than five years of service as on 1-1-84 and Mr. K. G. Bhagat, states that all of them have been absorbed and they continue in service. Nothing survives in this petition and accordingly it is disposed of with no order as to costs." But, even in spite of this admission, the Respondent have delayed this until 1988-89. In fact, they were given only temporary status from the year 1984 and that was subsequently revised to 1981. Therefore, the continued injustice forced the Petitioner to raise the above industrial dispute, presently before this Tribunal. Therefore, the issue has been held subsisting and it cannot be said a belated one. Further, the Respondent having submitted unconditionally that the Petitioner/Workmen have already been absorbed and thereby made the Supreme Court to dismiss the Writ Petition cannot now take a different stand delaying the temporary status and absorption beyond the eligible and entitled date. Further, the original dispute was raised way back in 1982 in Writ Petition No. 5640/82 and presently raised here due to infraction of the Respondent. Even in the Writ Petition No. 3117/85 the Petitioner has raised the same plea, but the High Court of Madras over ruled the objection and ordered for reference of the dispute. The Respondent did not prefer any appeal against the order of Writ Petition. Hence, this plea of laches, delay and other things cannot be raised now because, it is settled law that in the absence of appeal against the rejection of grounds, the same cannot be raised in consequent proceedings, therefore, there was no delay and otherwise the same cannot be pleaded now by the Respondent/Management.

15. Though the argument of the learned counsel for the Respondent is vehement, I find there is no point in the contention of the Respondent because this dispute was

raised even in the year 1982 before the Supreme Court and the Respondent has admitted before the Supreme Court that Petitioner/Workmen were absorbed and they are continuing of work in the Respondent/Management. Under such circumstances, as the Respondent has not regularised the workmen concerned, on the same issue they have raised another dispute in the year 1985 and referred to this Tribunal. Under such circumstances, I find there is no point in the contention that the claim is stale and belated one. As such, I find this contention is to be rejected.

16. The next contention of the Respondent is the reference made by the Ministry is only with regard to demand of the union to grant temporary status to 86 workmen by the Respondent/Management. On the other hand, the members of the Petitioner Union had already attained the temporary status on 1-1-84 as per Ex. M3 and subsequently from 1-1-81, as per Ex. M4 based on the Inderpal Yadav's case. Therefore, the grant of temporary status from 1-1-81 is justified. Since they were engaged as project Casual Labour and not as open line Casual Labour, they were given temporary status from 1-1-81. On the other hand, the Petitioner Union is claiming temporary status pertaining to open line Casual Labour on completion of 120 days of continuous service which is not maintainable and therefore, as per the reference the Petitioner's case has been complied with and therefore, the Petitioner union is not entitled to any relief and the claim is to be dismissed.

17. Here again, I find there is no point in the contention of the Respondent because all along it is the contention of the Petitioner Union that they have to be regularised on completion of 120 days of continuous service and as per the judgement of Supreme Court, it is the duty of the Respondent/Management to prove that they have been employed only as project Casual Labourers and not as open line Casual Labourers. But, in this case, the documents relied on by the Respondent have not proved that the members of Petitioner Union were engaged only as project Casual Labourers and not as open line Casual Labourers. Under such circumstances, I find, this dispute is maintainable before this Tribunal.

18. Again, the learned counsel for the Respondent contended that in Ex. M3 and M1 which are office orders issued to the Petitioners, wherein, it is clearly stated that 1/30th scale of pay has been granted to Petitioners on completion of 180 days of continuous service, which prove that the members of Petitioner Union were engaged as project Casual Labourers and therefore, the contention of Petitioner Union that they are entitled to benefits of open line Casual Labourers cannot be accepted.

19. But, again the learned counsel for the Petitioner argued that Ex. M1 is dated 23-10-86 and Ex. M4 is dated 11-9-96 which are subsequent to raising of litigation in 1982 by the workmen before Supreme Court and hence, they are after the fact and so not relevant and cannot be relied. Further, Ex. M4 was an internal document not in the notice of workmen. Even assuming that the workmen were put on notice of Ex. M1 and M4, they do not amount to

acceptance or contract of employment as project employees. Further, by none of the exhibits, it is established the work in which the Petitioner/Workmen were engaged was a project as per definition of Ex. M2. Though the Respondent relies on Ex. M6 and M7 to establish that the Petitioners being project labourers by showing that these exhibits were signed by Permanent Way Inspector, Special Works, but in the first place both exhibits were prepared in 1985 which is subsequent to raising of litigation in this case by the workmen before Supreme Court. Therefore, it is after the fact. Therefore, they are not relevant. Secondly, both the exhibits were signed in Permanent Way Inspector, Special Works but in subsequent places it is signed by Permanent Way Inspector. Further, these documents are internal registers of Respondent/Management and not under possession of Petitioner/Workman and not shown to workmen and therefore, no reliance can be placed that they prove the Petitioner/Workmen are project Casual Labourers. Further, the thumb impression or signature found in the beginning of exhibits, but much later than the date Permanent Way Inspector had signed, therefore, it cannot be said that the Workmen were aware of the contents of identity or designation of the signatory. Therefore, the Respondent has not established by any documentary evidence that the members of Petitioner Union were appointed for project work or the members of Petitioner Union were appointed as project Casual Labourers. In this case, it is admitted by MW1 that Ex. W3 is the combined seniority list for so called open line Casual Labour and project Casual Labour. But the absorption of workmen of Petitioner Union, they have not followed or observed this list. This is deliberate denial of legal and legitimate entitlement of Petitioner/Workmen. Only to overcome this misdeed, the Respondent contended that members of Petitioner Union are project Casual Labour and they are not entitled to the benefits of revenue Casual Labour or open line Casual Labour. Though the Respondent relief on nature of wages paid to members of Petitioner Union during the relevant time to establish that the members of Petitioner Union were project labourers, but Ex. M3 is also an internal office note of which the members of Petitioner Union have no knowledge and in any case, this cannot constitute a conscious contract for employment in project by the members of Petitioner Union. Therefore, the payment of 1/30th of wages itself does not prove anything.

20. I find much force in the contention of the learned counsel for the Petitioner. I find in this case, the Respondent/Management has not established the fact that the members of the Petitioner Union were engaged only as project Casual Labourers with any satisfactory evidence. Under such circumstances, I find this point in favour of the Petitioner Union.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner Union is entitled?

21. In view of my foregoing findings, I find the Petitioner Union is entitled to the relief as claimed by them. Therefore, I direct the II Party/Management to regularise the services of the members of the Petitioner Union mentioned in the claim petition by granting temporary status on completion of 120 days of service on par with their juniors and also direct the Respondent/Management to pay the consequential benefits. No Costs.

22. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 16th July, 2004.)

K. JAYARAMAN, Presiding Officer

Witness Examined :

For the I Party/Claimant : WW1 Sri G. Balasubramanian

For the II Party/Management : MW1 Sri Joseph Jesudoss
Dennis

Documents Marked :

For I Party/Claimant :—

Ex No.	Date	Description
W1	23-07-76	Xerox copy of the circular of Railway Board.
W2	27-04-79	Xerox copy of the regularisation order of juniors.
W3	04-02-81	Xerox copy of the combined seniority list of KKDI Sub Division.
W4	19-10-84	Xerox copy of the judgement of Supreme Court in W.P. No. 5640/82.
W5	Sept. 95	Xerox copy of the counter of Respondent in W.P. 3117/95.
W6	10-07-01	Xerox copy of the judgement of High Court in W.P. 3117/95.

For II Party/Management :—

Ex No.	Date	Description.
M1	09-04-79	Xerox copy of the Office Order No. 52/79/WP.
M2	Nil	Extract of Chapter XX of IREM.
M3	Nil	Xerox copy of the documents pertaining to grant of 1/30th pay to 26 project Casual Labourers.
M4	11-09-86	Xerox copy of the letter issued by Railway Board regarding Project Casual Labour terms of employment.
M5	Nil	Statement showing employment particulars of 86 workmen.
M6	Nil	Xerox copy of the service register of WW1.
M7	Nil	Xerox copy of the service register of Sri C. Perumal.
M8	Nil	Xerox Copy of the pages 170 and 71 of IREM Vol. I.

नई दिल्ली, 1 सितम्बर, 2004

का.आ. 2393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल इश्युरेन्स कं. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कानपुर के पंचाट (संदर्भ संख्या 298/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-2004 को प्राप्त हुआ था।

[सं. एल-17011/14/99-आई आर(बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st September, 2004

S.O. 2393.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 298/99) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of National Insurance Co. Ltd. and their workman, which was received by the Central Government on 27-8-2004.

[No. L-17011/14/99-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SRISURESH CHANDRA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR-COURT, SARVODAYA NAGAR, KANPUR, U.P.

Industrial Dispute No. 298 of 99

In the matter of dispute between :

General Insurance Employees Association
The Union Secretary GIEA C/o O. P. Mathur
117/K-36 Sarvodaya Nagar, Kanpur.

AND

National Insurance Company Limited
The Regional Manager
NICL Nawal Kishore Road,
Hazaratganj Lucknow.

AWARD

1. Central Government, New Delhi, Ministry of Labour, vide notification No. L-17011/14/99-IR(B-II) dt. 30-11-99 has referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the management of National Insurance Co. Ltd. Lucknow to deny regularisation of the service of Sh. Rajendra Kumar Gaur, s/o Sri Guru Prasad and to deny salary according to the scale of pay of the post is legal and justified? If not, what relief is the workman concerned entitled to?”

2. Briefly stated facts of the case of the workman is that the workman Rajendra Prasad Gaur was employed by the opposite party as peon in the office of Sr. Divisional Officer, of the opposite party at Kanpur in Ashok Nagar which is working under the Regional Manager, National Insurance Co. Limited, Lucknow. Although the work and

the post on which the concerned workman was appointed was permanent, the concerned workman was paid his wages @Rs. 15 per day initially which was subsequently enhanced to Rs. 20 per day. It has been alleged by the workman that due to unfair labour practice he was paid the above wages by the employer. It has further been alleged by the workman that he was working against regular and permanent post of peon but was paid much less wages in comparable to wages payable to the peons by the management and thus has claimed that he is entitled to full wages as are applicable to peons of the opposite party on prescribed scale of peons. It has further been alleged by the workman that the services of the workman have not been regularised instead opposite party without any reason or rhyme terminated his services w.e.f. 21-3-89. This action of the management has been alleged to be illegal and unjust. It has also been alleged that on earlier occasion the concerned workman challenged his termination and on being referred the matter to the Central Government, the matter was referred for adjudication to this tribunal where earlier dispute was numbered as I.D. Case No. 21 of 94 wherein this Tribunal granted the concerned workman the relief of reinstatement on the same post and in the same capacity with wages which was drawn by the concerned workman at the time of retrenchment. The further contention of the workman is that the management reinstated the workman w.e.f. 1-12-97 but has not paid him wages for the period he remained out of employment w.e.f. 21-3-89 to 30-11-97. The workman claimed wages for the said period before Central Govt. Industrial Tribunal by way of filing of LCA Case No. 344 of 97 where his claim was allowed by this court. Thus it is clear that the workman is working at the post of peon w.e.f. 31-12-85 continuously under the opposite party. It has further been alleged by the workman according to the principles of equal pay for equal work, the workman should have been paid by the employer wages on the same scale and allowance which as are being paid by the employer to the regular and permanent peons. It has been also alleged that a number of peons have been inducted in the service of the management by way of fresh appointment, but the claim of the workman was not considered which is illegal and unjust. Lastly it has been alleged by the workman that as he was appointed against regular and permanent vacancy of a peon by the opposite party his services should have been regularised by the employer. On the basis of above pleadings it has been prayed by the concerned workman that he be declared permanent and regular on the post of peon and be also paid full scale salary together with allowances as are admissible to the peons of the management from the very beginning.

3. Management of Insurance Company has contested the claim of the workman and has filed written statement running into 85 pages. It has been admitted by the management that Industrial Tribunal in I.D. No. 21 of 94 held workman's termination as bad in law and has also admitted that the tribunal granted relief of reinstatement to the concerned workman at the same post and in same capacity with wages which was drawn by him at the time of retrenchment. According to wishes of the award the

concerned workman was reinstated by the management in the same capacity with same wages which he used to receive at the time of utilisation of his services. It has been alleged that the management is utilising the services of the workman on daily wages, hence question of payment of salary in prescribed scale of pay and his absorption in the permanent services does not arise. Initial engagement of the workman with the management was on contractual basis on 30-6-86 and he was paid through petty cash vouchers. The engagement of the workman was not continuously rather was intermittent and his engagement was purely on adhoc basis according to the exigencies of the work and he was engaged by the management according to need. Concerned workman was never employed by the management in any capacity and that the workman is not entitled for payment of salary applicable to an employee of the company as he never worked against any regular vacancy or on any permanent post. It is also alleged that service conditions of the company as are applicable to regular and permanent employee are not applicable in the case of the workman who was merely a casual labour. The workman had never been governed by the Rules/Regulations of the National Insurance Company nor he was ever issued any appointment letter for the post in subordinate cadre. Management has also alleged that the workman has failed to file relevant particulars alongwith statement of claim in support of his claim that he actually worked on the post of peon under the management. Management has no right to appoint the workman on regular and permanent post i.e. Senior Divisional Manager, National Insurance Company Limited, Ashok Nagar, Kanpur. That there are set rules and regulations for making regular and permanent employment in the company and since the concerned workman was never subjected to such rules he is not entitled to claim regular and permanent employment under the opposite party. Workman concerned was never sponsored through employment exchange and was never interviewed for impanelling his name as per laid down procedure, under these circumstances question of absorption of the concerned workman in the subordinate category on permanent basis does not arise at all. It is alleged that selection process of the management is prerogative of the management and the workman concerned cannot be allowed to challenge the authority of the management seeking his absorption in the service of the opposite party of considering him to be a permanent employee of the company. The claim of the workman is highly belated and stale as such is not legally maintainable under the provisions of the Act. Workman concerned has no right or lien on any regular and permanent post and the claim of the workman is absolutely baseless, beyond the jurisdiction of this Tribunal and the workman is not entitled for any relief as claimed by him. Apart from above, the management of National Insurance Company has challenged the claim of the workman on a variety of grounds in paras 31 to 187 which is not considered to be detailed here. On the basis of the above pleadings the management has prayed that the claim of the workman be dismissed as the workman is not entitled for any relief in the present reference.

4. Workman has filed rejoinder in the case but nothing new has been alleged by him.

5. Workman in support of his case has filed as many as 16 documents per list dated 20-5-03 and apart from it has also examined himself as W.W.1, whereas the management adduced the evidence of its Assistant Manager Sri Surya Kumar Pandey as M.W.1, but has not filed any documentary evidence in support of its case.

7. There appears to be no controversy over the fact that the workman was engaged in employment by the management on daily wages. It is also not in dispute that the services of the workman were disengaged and by virtue of the award passed by the tribunal in favour of the workman, the workman was reengaged on the job from the date he was dismissed in the year 1997. Since then the workman is being paid on daily rate basis as prescribed. It is also admitted by the workman in his statement on oath that he has not moved any application for regularisation of his services and that for the first time he has moved before the ALC(C)/Tribunal for his regularisation.

8. The only question therefore needs to be considered is whether a daily wager employee can claim regularisation of his services and also can claim salary and the scale of pay equal to the permanent employee with the management.

9. The contention of the workman is that since he is working with the management from the very beginning i.e. 1985 and even after his disengagement he was reinstated to his original job on the daily wages under the orders of the award and has also been paid the arrears for the period during his disengagement, therefore, he becomes entitled for his regularisation in service as he has worked for more than 240 days regularly in calendar year preceding the claim before ALC Kanpur. In support of his contention the workman has relied on law laid down by Hon'ble Supreme Court in writ petition between Bhagwati Prasad and Delhi State Municipal Development Corporation reported in FLR 1990(60) page 157, wherein the Hon'ble Court was pleased to hold that three years experience ignoring artificial breaks in the short periods, would be sufficient for confirmation and that educational qualification is a factor only at the initial entry in service. In the above noted case the Hon'ble Court considered the contention raised by the workman in respect of a prayer by way of writ of mandamus to regularise the service and pay to them equal wages with initial basic pay, Dearness allowance and other admissible allowances at par with regularly appointed employees performing the same or similar duties. The Hon'ble Court in the above noted case was pleased to direct the, Industrial Tribunal to examine the contention of contesting parties and to file a report. On consideration of the report filed by the tribunal the Hon'ble Court while agreeing with the suggestion as worked out by the tribunal made suggestion of framing of a scheme for regularising all the petitioners in the above noted writ petition. The court also directed few of the senior most workman to be regularised and remaining to be regularised in the phased manner. On the strength of the above law workman's contention is that he too is entitled

for regularisation in the service and for equal pay at par with the regular appointed employee of the same cadre. The above law is not applicable on the facts and circumstances of the present case as it is not borne out from the evidence filed by the parties that a bunch of employees are working with the management on daily wages for a number of years. It has to be seen that there existed the work of permanent nature as claimed by the workman. The workman is in engagement on the basis of the award and is being paid at the rate of daily wage, in compliance of the award therefore the engagement of the workman with the management cannot be presumed to be engagement against some regular or permanent vacancy. The workman was engaged without his name being called from the employment exchange and without observing any formalities such as written test or interview.

9. The contention of the management is that there is rules prescribed for regular appointment of subordinate cadre and Sr. Divisional Manager is not authorised to make appointments of sub staff under the rules.

10. The Hon'ble Supreme Court in a case reported in 1994 FLR Vol. 69 page 695 Dr. A A Pargaonkar versus State of Maharashtra was pleased to held that the appellant though worked for 9 years without break was not entitled to be regularised. The requirement of rules of selection cannot be substituted by human considerations. Admittedly in the present case the workman has not been appointed by observing prescribed rules therefore he cannot get any advantage of his being considered for regularisation on the ground of his continuous service for a period of 3/4 years.

11. The Hon'ble Supreme Court in another case reported in 1994 Lab IC page 1197 Madhyamik Shiksha Parishad U.P. Versus Anil Kumar & others also held that the persons working against a post not sanctioned, no right of regularisation exist for such employees. In the present case also the case of the management is uncontroverted that there is still no sanctioned post against which daily wage is being engaged. Workers on temporary assignment only working on unsanctioned post has no right to be regularised as held by the Hon'ble Supreme Court. The Hon'ble Court further held that completion of 240 days of work cannot attribute the status of casual workman of adhoc persons. Similar view has been taken by the Hon'ble Supreme Court in a other case reported in 1992 FLR (64) 1110, Delhi Development Horticulture Employees Union versus Delhi Administration, Delhi and others and the Hon'ble Court has clearly laid down that it has to be established that there must be a regular and permanent post and against the same appointing and getting on adhoc or temporary post has been resorted to deny the legitimate benefit of permanent employee. In the present case the facts are otherwise. The workman has not been able to establish that he was appointed against permanent post. The Hon'ble High Court of Allahabad also held the same view in 1993 Lab IC 836 Zakir Hussain vs Engineer in Chief, Irrigation Department and it was held that person who is appointed on daily wage on adhoc

basis does not have any right to the post and he could not claim regularisation of his services merely because he has completed 240 days of continuous services. Relying on the law laid down by the Hon'ble Supreme Court in the case of Delhi Development Horticulture Employees Union (supra). A number of other case laws have been relied on by the management to strengthen its contention that the workman in the present case was working only on daily wages in accordance with the need or exigencies of work and that he is not working against any permanent post. It is further contended by the management that the claimant's engagement is not in observance of the prescribed rules for employment.

12. On behalf of the workman it has also been argued that three or four persons have been given employment after his disengagement from the service and they have been made permanent on their respective post. So, far as this contention is concerned this point has already been considered and the workman have already been awarded the advantage by directing his reinstatement through earlier award passed by this tribunal. In the present case there is nothing on record to substantiate the contention that three or four persons named by the workman in his statement of claim or either of them have been appointed after disengagement of the workman or after his reinstatement after passing of the earlier order. The workman has not been able to adduce any evidence in this regard. No documentary or ocular testimony is available on record which may strengthen the stand taken by workman in this behalf. Therefore, the workman is not entitled for any advantage of the employment of other named workmen.

13. From the serious consideration of the rival contentions raised by the parties it is established that the workman's engagement is not against a permanent vacancy. It appears that the workman by means of the present exercise is attempting to gain his back door entry in the services of the management depriving the others who are to be engaged through the prescribed procedure of employment. The question of not regularising the services of the workman by the management therefore, cannot be said to be illegal or unjustified.

14. The workman is being paid admittedly the wages at the rate of daily wage. The workman is, therefore, entitled to receive the daily wages at the rates prescribed by the authorities from time to time. He cannot therefore claim to be entitled for the scale of the pay of the post or regular employees of the similar category.

15. The award is, therefore, answered in negative against the workman.

SURESH CHANDRA, Presiding Officer

नई दिल्ली, 1 सितम्बर, 2004

का.आ. 2394. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकार

पटना के पंचाट (संदर्भ संख्या 11सी/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-8-2004 को प्राप्त हुआ था।

[सं. एल-12012/244/95-आई आर(बी-II)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 1st September, 2004

S.O. 2394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11C/2001) of the Central Government Industrial Tribunal Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 27-8-2004.

[No. L-12012/244/95-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No. 27 of 1996

No. 11C of 2001

Management of Central Bank of India, Zonal Office, Mourya Lok Complex, B-Block, 2nd Floor, Patna and their workmen represented by the Deputy General Secretary, Bihar Provincial Central Bank of India Employees Association, Patna.

For the Management : Sri Ajay Kumar Sinha,
Advocate.

For the Workmen : Sri Devi Kant Jha, Advocate.

PRESENT:

Priya Saran, Presiding Officer, Industrial Tribunal, Patna.

AWARD

The 20th August, 2004

By the adjudication order No. L-12012/244/95-IR(B-II) dated 29-2-1996 the Government of India, Ministry of Labour, New Delhi has referred under Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter to be referred to as 'the Act'), the following dispute between the management of Central Bank of India, Zonal Office, Mourya Lok Complex, Patna and their workmen represented by the Deputy General Secretary, Bihar Provincial Central Bank of India Employees Association, Patna for adjudication to this Tribunal :—

"Whether the action of the management of Central Bank of India, Patna in dismissing the services of S/Shri Mahesh Prasad Gupta, Kamlesh Kumar and Vinod Kumar Rajak, sub-staff w.e.f. 25-1-94 is legal and justified? If not, to what relief are the said workmen entitled?"

2. Written statements are filed by both the parties and they have contested the reference. They have also filed reply/rejoinder to the written statement of the other side.

3. It seems desirable to mention here itself that out of three workmen whose dismissal from services was

disputed and a reference regarding all those made by the Govt. for adjudication by this Tribunal, one worker Sri Vinod Kumar Rajak did not join the contest with the other two workmen, not be filed any written statement to contest the case. He also did not put in his appearance in the proceeding. As there is no material worth the name in his support before me an inference has to be deduced against him and I am of the opinion that he has got no case.

4. Now remain two workmen, one Mahesh Prasad Gupta and the other Kamlesh Kumar, whose dismissal from service is in dispute. The case of worker Mahesh Prasad Gupta, in short, is that he was appointed to the post of sub-staff vide memo dated 31-1-1992 issued by the General Manager, Central Bank of India, and he was posted at Dhamdaha Branch of the Bank, Purnea Division. He joined the Branch on 17-2-1992 on certain conditions stipulated in the memo of even date. He continued in his service till 25-1-1994, when he was dismissed after domestic enquiry. It is further stated in written statement that he was issued a memo dated 28-8-1992 under the signature of Regional Manager, Purnea listing charge of giving false statement in the document pertaining to educational qualification for his employment. He submitted explanation as called for, denying the charge. The management on finding the explanation unsatisfactory issued charge sheet of gross misconduct stating that "he had produced School Leaving Certificate issued by Rajkiya Samposit High School Gamharia, Jamshedpur dated 11-9-92 which purported to have not been issued by this School". An enquiry was conducted to the charge. The management finally dismissed the worker from service. His appeal was also not accepted by the Appellate Authority. The worker has challenged the domestic enquiry and the order of the Disciplinary Authority on various grounds on being that the original copy of the School Leaving Certificate which was the basis of the charge sheet was not produced by the management although demanded. As stated by the workman, the action of the management in dismissing him is illegal unjustified, motivated and unfair.

5. The case of worker Kamlesh Kumar, in short, is that he was appointed by the bank vide order dated 17-2-1992 and he was posted at Regional Office, Purnea after all formalities as enumerated in the memo of even date. He was issued a memo on 28-8-1992 under the signature of the Regional Manager alleging charge of giving false statement in documents pertaining to educational qualification for employment. He submitted his explanation to the memo which was not accepted by the Bank. The Disciplinary Authority issued him a charge sheet on 8-10-1992 alleging that "he produced School Leaving Certificate issued by Sri Daroga Prasad Rai High School, Saristabad, Patna on 16-11-1986 purported to be fake". Enquiry was conducted into the charge, but the original copy of the School Leaving Certificate the basis of the charge sheet was not produced by the management, although demanded. The Enquiry Officer gave his finding in workmen's favor that the charge was not proved. The Disciplinary Authority did not agree with the finding above and workman was eventually dismissed from service. His

Appeal too was not accepted by the Appellate Authority. The order of dismissal has been challenged by the workman as being illegal, unjustified and unfair for various reasons noted in written statement.

6. In view of aforesaid facts the worker have prayed for their reinstatement and regularization in service with full back wages.

7. The management has *inter alia*, contended in their written statement that the workers obtained employment in the Bank as sub-staff by submitting false documents regarding their educational qualification. They got their service by mis-representation and fraud and hence, the same is terminable at the instance of the employer. A Departmental Enquiry was held to give a fair chance to the workers to defend themselves. As they were found to have submitted false educational documents for securing their employment, the disciplinary Authority passed orders of their dismissal. The workers preferred appeal before the Appellate Authority which was rejected. The action of the management is based on fact and stands justified. The management has prayed in view of all above to answer the reference in their favour.

8. A mention would be desirable at this place that fairness of domestic enquiry was earlier decided by this Tribunal vide order dated 23.8.2001 and it was held that the same was not fair on account of violation of the principles of natural justice. In the same order the management was accorded a chance to adduce evidence against the workmen. The management was thus directed to prove the charge which has led to the dismissal of the workman. We are simply concerned there with the fact whether the charge against the workman gets substantiated or not in view of evidence on record. If the charge stands established by the evidence then the workman are out of Court and if not, then they are entitled to their reinstatement in the service.

9. The parties examined two witnesses each besides filing some documents in support of their respective claims after Tribunal's order on fairness of domestic enquiry, and these materials alone have to be considered during this Award.

10. As the onus rests basically on the management to establish the charge I will take up their evidence first. Management witness No. 1 Chhathu Ram is the Head Master of Sri Daroga Pd. Rai High School, Saristabad, Patna. He attendant the Court with School Admission Register, 1980. The photocopy of Transfer Certificate (T.C.) bearing No. 375 dated 16-11-86 (Ext. M/1) was shown to the witness and he said that it was not issued by his School. He also identifies the endorsement at the fact of the Transfer Certificate under the signature of the then Head Master that the document appeared to be fake. The witness has also filed the counter foil book of Transfer Certificate (Ext. M/2) just to show that Ext. M/1 is not an identical format. The witness also produced Admission register of the year, 1980 (Ext. M/3) which does not show any admission prior to 11-1-80. During cross-examination the witness states in paragraph-8 that, in the School Admission Register of 1981, which he brought, the name of worker Kamlesh Kumar

has been shown at serial No. 91, showing his admission in the School on 21-1-81. This entry has been marked as Ext. W/1 on behalf of workman. The witness also proves the photocopy of certificate Ext. W/2 which is in the signature of then Head Master, Madhusudan Rai. In this Ext. it has been certified by the Head Master that the Kamlesh Kumar was a regular student of his School as he was admitted in the year 1981 at Serial No. 91. It has been further certified in this Ext. that the Clerk concerned had mistakenly in the earlier Transfer Certificate (Ext. M/1) has put 1980 instead of 1981. This document thus makes it abundantly clear that worker Kamlesh Kumar was student of Sri Daroga Pd. Rai High School Saristabad, Patna but in advertently a clerical mistake occurred in the T.C. Ext. M/1 and for this mistake on part of the School Clerk the worker can not be punished.

11. The Enquiry Officer, as has been noted in the written statement appears to be quite justified in giving a finding about the charge "not proved" against the worker Kamlesh Kumar. It is quite shocking that the Disciplinary Authority disagreed with his finding and inflicted the punishment. This is one part of story and there should not have been an order of dismissal against the worker Kamlesh Kumar on findings of the domestic enquiry.

12. Now, we come to the Central aspect of the charge against the worker Sri Kamlesh Kumar. The charge sheet against him is Ext. W/4. The allegation therein is that he had produced School Leaving Certificate issued by Sri Daroga Pd. Rai, High School, Saristabad, Patna dated 16-11-86 which purported to be fake. So, the basis of the charge is School Leaving Certificate dated 16-11-86. The management for the reasons best known to them, neither filed this document during domestic enquiry although desired by the worker nor produced the same before me. The document which was fake as per management and became the ground for workers dismissal should not have been withheld by the management. They rather laid emphasis before this Tribunal that School Leaving Certificate and the Transfer Certificate are one and the same document, but their contention gets falsified by MW-1's statement in paragraph-9 that School Leaving Certificate is issued by his School.

13. The appointment letter (Ext. W/3) with relation to the worker Kamlesh Kumar is before us. It writes at the bottom that all documents with full name and the signature of the appointee was to be taken by the office before issuing appointment letter. In clause 5 of the document it is mentioned that the documents regarding educational qualifications i.e. School Leaving Certificate and Mark Sheet, if any, in original as well as attested copy with candidate's signature was to be handed over alongwith other documents to the Regional Manager at the time of final appointment. This document clearly indicate that School Leaving Certificate in original was also to be furnished to the Regional Manager prior to getting appointment. The management, therefore cannot be permitted to say that the School Leaving Certificate was not filed before them by the worker instead he furnished only T.C. (Ext. M/1). The management has not acted in propriety and fairness in dismissing worker Kamlesh Kumar

from the service, since the charge against him has not been at all established. The order of dismissal dated 25.1.94 (Ext. W/6 thus cannot be maintained and has to be set-aside.

14. The worker Kamlesh Kumar has examined himself as WW1 in support of his case. He filed appointment letter (Ext. W/3) and some other documents (Exts. W/4 to W/8) but no detail discussion is required thereon view of irrefutable finding above. He has rightly claimed his entitlement for his reinstatement in service with full back wages.

15. Now, the case of the other worker Mahesh Prasad Gupta is to be taken up for consideration. He has also been removed from service on identical charge. The management alleged that he got himself appointed on the basis of School Leaving Certificate dated 11.9.1992 not purported to have been issued by Rajkiya Camposit High School, Gamharia, Jamshedpur. Management's witness No.2 Kalp Nath Mishra, an Assistant Teacher of Gamharia School brought before this Court the School Admission/ Register (Ext. M/5). He was shown the Transfer Certificate (Ext. M/6) relating to the worker which was never issued by his School as he says. I have already said that Transfer Certificate is not the basis of the charge and the management can not be absolved of their responsibility by producing any T.C. The witness has clearly stated in para-7 that School Leaving Certificate is issued from his School but only to those students who passed Matriculation from there. No such Register has ever been produced by the management before me. The terms of appointment of this workmen are also the same which have been noted earlier. His appointment letter is available on record. When the Bank Authority obtained School Leaving Certificate and other documents with worker's signatures as per terms of appointment, then the management is not permitted to say that the worker filed only his Transfer Certificate (Ext. M/6) instead of School Leaving Certificate. Moreover, this document does not bear the signature of the worker which should have there in view of terms under appointment letter.

16. The concerned workmen examined himself as WW2. Besides supporting his case on fact he has filed Certificate issued by the then Head Master to the effect that he was a regular student of his School. Be that as it may, it can be well said that the management has virtually failed in their duty to produce School Leaving Certificate, the basis of the charge and in absence of this important document either at time of enquiry or before this Tribunal, it has to be simply inferred that the management without any justification and proof, upheld the charge against the worker Mahesh Pd. Gupta and dismissed him from service. In view of discussions above I am of considered opinion that charge against the worker Mahesh Pd. Gupta does not stand established and Bank's order in dismissing him from service is not liable to be maintained.

17. On careful analysis of the evidence before us what precisely precipitates is that workers Kamlesh Kumar and Mahesh Prasad Gupta both were selected for appointment as sub-staff in the bank subject to their compliance of certain conditions enumerated therefore. One of the conditions was that of filing School Leaving

Certificate and other educational documents with their signature etc. thereon. These documents were to be kept in bank's file. The workers were subsequently placed in service by the bank. Some time later, the management allegedly learnt that their School Leaving Certificate i.e. SLCs. were fake and forged documents on the basis of which they succeeded in securing appointment and so, charge sheets were issued to them both. After domestic enquiry the management gave a guilty verdict followed by their dismissal from service. It is thus crystal clear that filing of forged and fake SLCs. has been the only allegation against the workers. The document although very much in custody of the Bank was never produced at any stage of the proceeding, whether during enquiry or before this tribunal. Rather, the bank concentrated itself in a wrong direction in making all futile efforts to show that Transfer Certificates i.e. T. Cs. filed by the workers were not genuine documents. Here also the Bank could not establish the points as the TCS. on record do not bear workers' signatures etc. which should be there in view of specifically noted conditions in this respect in the appointment letter. It clearly indicates that the bank has mala fide withheld original documents which were submitted by the workers at the time of appointment. So, in any view of the matter the charge seeking of appointment on the basis of fake S.L.C.s has not been at all proved against any of these two workers. An adverse finding and guilty verdict in contest with said charge can not be termed as proper and just in absence of key-document i.e. SLC. And accordingly, no punishment based on a misdirected finding would sustain under law nice being non-judicious and against all legal principles.

18. To conclude, so far worker Binod Kumar Rajak is concerned, we have already noted that he has withdrawn himself from the contest and no evidence whatsoever was led from his side. In absence of any material on his behalf. I am but to infer and this may be the only possible conclusion that he has got no case nor he appears to have any dispute with management regarding his dismissal.

19. I view of what has been discussed above and also the evidence and material on the record in connection with other two, I am of firm opinion and accordingly hold that the order of dismissals of the workers Kamlesh Kumar and Mahesh Pd. Gupta are bad in law and can not be maintained since charge against them have not been established. Their dismissal orders are accordingly set aside. Both the workers are directed to be reinstated to their back position in service forthwith with full back wages and allied benefits. It is made clear that the management shall not treat any breakage in their service during this period. The management is accordingly directed to withdraw concerned orders of their dismissal from service and reinstate both the workers viz. Kamlesh Kumar and Mahesh Prasad Gupta in service with back wages without fail within one month of the publication of this Award.

20. Award accordingly.

Dictated & corrected by me.

PRIYA SARAN, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2004

का.आ. 2395.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या आईडीएलसीआईडी-139/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-9-2004 को प्राप्त हुआ था।

[सं. एल-41014/05/2004-आईआर(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 2nd September, 2004

S.O. 2395.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. L.C.I.D. 139/2002) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 1-9-2004.

[No. L-41014/5/2004-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD**

Present.

Shri E. Ismail

Presiding Officer

Dated the 10th day of March, 2004

INDUSTRIAL DISPUTE NO. L.C.I.D. 139/2002

(Old I.D. No. 288/98 transferred from Industrial Tribunal cum Labour Court, Guntur)

BETWEEN:

Sri Karumanchi Prakasa Rao,
S/o Devapalam,
Mamillapalli Post,
Ponnur Mandal,
Guntur District.

AND

The Branch Manager,
State Bank of India,
Mamillapalli,
Ponnur Mandal,
Guntur District.

APPEARANCES:

For the Petitioner : M/s V. Viswanatham & K. Vijaya
Bhaskar Reddy, Advocates

For the Respondent : M/s B. G. Ravindra Reddy & B. V. Chandra Sekhar, Advocates

AWARD

This case I.D. No. 288/98 is transferred from Industrial Tribunal cum Labour Court, Guntur in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and renumbered in this court as L.C.I.D. No. 139/2002. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3.8.1995 between Sri U. Chinnappa and M/s Cotton Corporation of India and two others.

2. In spite of several adjournments given from 2-12-2002 for enquiry of the Petitioner for four adjournments including 10-3-2004 the petitioner has not turned-out. In spite of number of adjournments the petitioner has failed to produce any evidence in support of his claim. There is nothing on record to substantiate the case of the Petitioner.

Accordingly a 'Nil' Award is passed. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 10th day of March, 2004.

E. ISMAIL, Presiding Officer

Appendix of Evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 6 सितम्बर, 2004

का.आ. 2396.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बेंगलूर के पंचाट (संदर्भ संख्या 39/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-9-2004 को प्राप्त हुआ था।

[सं. एल-17012/4/2002-आईआर(बी-II)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 6th September, 2004

S.O. 2396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial

Dispute between the management of Life Insurance Corporation of India and their workman, received by the Central Government on 6-9-2004.

[No. L-17012/4/2002-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BANGALORE

Dated, the 26th August, 2004

PRESENT: Shri A.R. Siddiqui, Presiding Officer
C.R. No. 39/2002

I Party

Shri M.N. Dinakar,
S/o Neelakantappa,
R/o 5th Main, II Cros,
Mochi Colony, Harihar,
Udupi-576101 (Karnataka).

II Party

The Senior Divisional Manager,
LIC of India, Divisional Office,
Jeevan Krish, Ajjara Kada,
Udupi-576101 (Karnataka).

APPEARANCES:

I Party : None

II Party : M. Chandrasekharan, Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of sub-section (I) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-17012/4/2002-IR (B-II) dated 30-7-2002 for adjudication on the following schedule :

SCHEDULE

“Whether the action of the management of LIC of India in terminating/discontinuing Shri M.N. Dinakar from service w.e.f. 10-10-2000 is legal and justified? If not, what relief the concerned workman is entitled to?”

2. After the receipt of the reference, notices were taken against the parties. The II party made appearance through counsel, whereas, the I party has remained absent before this tribunal despite the service of notice sent to him under RPAD. From June 2004 till 21-7-2004, however, case came to be adjourned thrice giving further opportunity to I party to make appearance before this tribunal and to file his claim statement. Unfortunately, he remained absent before this tribunal all along and it was taken that he has no claim to file. Then the case came to be posted for filing of counter statement by the management and that has been filed on 17-8-2004 and the case came to be posted for passing of the award.

The case of the management as made out in the counter statement is as under :

“Para 2 : The First Party Mr. M.N. Dinakar had worked in the Harihar Branch of LIC of India, under Udupi Divisional Office from 21-11-98 to 10-10-2000. He was a candidate sponsored by the Davanagere Employment Exchange for Temporary appointment. When the regular Watchman was transferred to Puttur Branch, as a stop gap arrangement, the first party was appointed purely on temporary basis. The second party had issued a conditional appointment order dated 21-11-98 with the specific condition that the appointment is temporary and only until employment of a candidate on a regular basis or transfer of regular employee. His services were discharged with effect from 11-10-2000, when a regular permanent appointment was made for the vacancy. Accordingly, one Mr. N. Nazamuddin, vide salary roll No. 640553 had been appointed as a regular Watchman in Harihar and hence the first party was discharged strictly according to the terms of the appointment order. Aggrieved by the discharge from service, the first party sought the conciliation of Assistant Labour Commissioner (Central) Harihar and on failure of the same, the Govt. of India, had referred the dispute to this Hon'ble Tribunal for adjudication.

Para 3 : The first party neither attended nor filed the claim statement through the Hon'ble Tribunal had conducted 23 hearing in the dispute. Hence, the second party filed this counter statement.

Para 4 : The second party submits that the first party was working as a Temporary Watchman from 21-11-98 to 10-10-2000 an appointment order was issued on 21-11-1998 for appointment of temporary watchman with the conditions which reads as “from the date of your joining service to the period pending employment of a candidate on a regular basis or transfer or a regular employee”. “Your employment on a temporary basis as aforesaid shall be governed by the provision of the Life Insurance Corporation of India (Employment of Temporary Staff Instruction, 1993) and the period of employment is limited to.

1. To the period of pending employment of a candidate on a regular basis.

2. Or Transfer of a regular employee.”

“This appointment is given to you purely on a temporary basis and it shall come to an end on the expiry of the period mentioned in para-1 above or at any time prior thereto if it becomes necessary to terminate such appointment without assigning any cause therefore.”

“If the terms and condition mentioned herein above are acceptable to you, you are requested to report for duty at the office of the Corporation, insisted for duty at the office of the Corporation, insisted in para 1

above immediately and in any event without a period of 5-days failing which this offer shall stand withdrawn."

Para 5 : Accordingly, the first party accepted the conditions and joined as a temporary watchman at Harihar Branch of the second party Corporation.

Para 6 : It is submitted that, in view of the first party's acceptance for the temporary appointment offered to him purely on a temporary basis, the question of notice or enquiry before discharge does not arise. The discharge is made on the basis of appointment order and hence violation of natural justice does not exist.

Para 7 : It is submitted that, the second party had offered the first party an opportunity to compete with the regular candidates for the Watchman Post condoning his over age as agreed in the provision of Recruitment Instructions 1993. This concession for competing for regular vacancy of Watchman was given by relaxing the upper age limit merely because he was working as a temporary watchman for a long time. Accordingly, the first party was allowed to compete with other candidates for recruitment on regular basis in August, 2000 and was not found suitable for absorption.

Para 8 : It is further submitted that, the Hon'ble Supreme Court of India in Civil Appeal No. 2104/2000 between LIC of India Vs. G. Sudhakar and others has approved this scheme and disposed of the appeal on 22-11-2001.

Para 9 : It is respectfully submitted that, the appointment and discharge of the first party was done on the contractual basis as per the provisions of appointment order. Hence, it comes under section 2 (oo) (bb) of the Industrial Disputes Act and as such it does not attract the provisions of retrenchment. Therefore, the question of continuing his service will not apply in the instant case.

Para 10 : Similarly the discharge of the first party is not coming within the provisions of unfair labour practice, since it is done purely on the basis of contractual agreement.

Para 11 : It is submitted that, in case the first party files a claim statement any time later, the second party may be permitted to file a regular counter in detail accordingly."

3. Of course as per the points of reference, the burden was cast on the management to justify its action in terminating/discontinuing the services of the I party working w.e.f. 10-10-2000. However, as seen above despite the personal service of the notice, that too by RPAD, the I party had remained ex-parte and has also not filed his claim statement making out the grounds as to how the action

taken by the Management was not legal and justified. Although the I party did not file his claim statement, the management to be on safer side, has filed its counter statement and as could be seen from the contentions taken in the counter statement, the action taken by the management appears to be legal and justified, in view of the terms of the appointment order issued to the I party. Therefore, looking into the conduct of the I party in not appearing before this tribunal and not coming forward with his claim statement, what appears is that he has lost interest in prosecuting his case. Therefore, the court is left with no alternative but to hold that the I party failed to substantiate the fact that the action taken against him by the management was not legal and justified. In the result reference is answered accordingly for non-prosecution and hence the following award :

ORDER

Reference is rejected for non-prosecution. No order to costs.

(Dictated to the LDC, transcribed by him and corrected and signed by me on 26th August 2004)

A.R. SIDDIQUI, Presiding Officer

नई दिल्ली, 6 सितम्बर, 2004

का.आ. 2397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 126/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-9-2004 को प्राप्त हुआ था।

[सं. एल-12012/91/96-आईआर(बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th September, 2004

S.O. 2397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 126/97) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 6-9-2004.

[No. L-12012/91/96-IR (B-II)]

AJAYA KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Presiding Officer, Shri Kuldip Singh

Case No. ID 126/97

Received on : 27-5-97

Registered on : 2-6-97

Decided on : 12-8-2004

The State Secretary, UCO Bank Empl. Association,
Kandaghat, Distt. Solan (H.P.)

Applicant.

Versus

The Zonal Manager, UCO Bank, Zonal Office,
Hotel Himland, Shimla.

Respondent.

APPEARANCES:

For the Workman : Shri Ajit Puri

For the Management : Shri N.K. Zakhmi

AWARD

Exercising powers conferred u/s 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Central Govt. vide No. L-12012/91/96/IR (B-II) dated 13th May, 1997 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of Zonal Office, UCO Bank, Shimla in not filling up the vacancy of Head Cashier in newly created Branch at Unna by posing Head Cashier Category ‘E’ (Workman) as per Promotion Policy Settlement dt. 13-4-88 is just and legal? If not, to what relief the Union is entitled?”

2. Today the representative of the workman Shri Ajit Puri appeared and made the statement that the Union does not want to pursue the present reference and the same may be returned as withdrawn. In view of the statement of the authorised rep. of the workman, the present reference is returned to the Govt. as withdrawn. Ministry of Labour be informed.

Chandigarh
12-8-2004

KULDIP SINGH, Presiding Officer

नई दिल्ली, 6 सितम्बर, 2004

का.आ. 2398.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, नई दिल्ली के पंचाट (संदर्भ संख्या 65/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-9-2004 को प्राप्त हुआ था।

[सं. एल-12011/9/2000-आईआर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th September, 2004

S.O. 2398.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/2000) of the Central Government Industrial Tribunal/Labour Court, New Delhi No. 1 as shown in the Annexure in the Industrial Dispute between the management of UCO Bank

and their workmen, received by the Central Government on 6-9-2004.

[No. L-12011/9/2000-IR (B-II)]

AJAYA KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NEW DELHI

Presiding Officer, SHRI S. S. BAL

ID No. 65/2000

Shri H.S. Rawat & Ors.

Through The State Secretary,
UCO Bank Employees Association,
C/o UCO Bank,
Parliament Street
New Delhi-110001

Versus

The Zonal Officer, Zonal Office, UCO Bank,
5-Sansad Marg,
New Delhi-110001

PRESENT :—None

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12011/9/2000/IR (B. II) dated 12-6-2000 has referred the following Industrial Dispute to this Tribunal for adjudication :—

“Whether the action of Zonal Manager, Zonal Office, UCO Bank, 5 Sansad Marg, New Delhi-1, in not considering the application of three workmen namely Shri H.S. Rawat, Shri G.S. Bhalla and Shri J.P. Sharma for the post of the ALPMO (Advance Ledger Posting Machine Operator) under their Circular No. ND/ZOC/PAS/98/19 dated 14th May, 1998 is legal and just? If not, then what relief the said workmen are entitled and from what date?”

2. Brief facts of the case as called from record are that the workman, Shri H.S. Rawat, Shri G.S. Bhalla and Shri J.P. Sharma had applied for the post of vacancies of Advance Ledger posting Machine Operators (ALPMOS) in response to the Circular Notification dated 14-05-98 of the management of UCO Bank inviting applications from the eligible workmen employee of the UCO Bank through proper channel i.e. through the Branch Manager, where they were working. The above said three workmen had submitted their application on 21-5-98 which were forwarded through the Branch Manager of Shahdara Branch. But the Zonal Office of the bank refused to consider the applications of these workmen on the ground that the same were not received by it within the stipulated date i.e. upto 28th May 1988. The workmen were aggrieved by this unjustified act of the Zonal Office of UCO Bank on its refusal they raised Industrial Dispute through its Employees Association

(Delhi State Committee) and thus the said reference was raised. It is further averred that the reference has been recovered espousal through duly authorised union of the UCBEA and the Respondent has violated terms of the Notification dated 14-5-98 by not considering the applications of the workmen and deprived these workmen from their due posting as ALPMO thus causing them financial loss and loss in other terms although the workman has applied much before the last date. The workmen have duly complied with the terms of the Notification issued by the bank. The workmen has prayed to direct the bank to consider their applications and appoint them to the Posts applied in accordance with the terms of said notification with full benefits of Special Allowances and Seniority w.e.f. the date they were entitled to the post and any other relief deem fit to this case.

3. The reference has been contested by the bank by filing reply wherein it has been admitted that the workman has applied for the post of ALPMO and their applications were received on 4-6-98 i.e. after the stipulated last date 28-5-98. It is averred that Mr. J.P. Sharma was a Junior Employee and as such was not eligible for the post in question. The application of Sh. G.S. Bhalla and Sh. H.S. Rawat could not be considered due to late receipt after stipulated last date. It is also averred that Sh. G.S. Bhalla was subsequently selected as ALPMO in another exercise. He has since left the bank after opting the Voluntary Retirement. Sh. H.S. Rawat was also subsequently selected as ALPMO with applicable functional Special Pay. On merits the Bank has denied that his action is unjustified and unlawful.

4. The perusal of the ordersheets shows that in the instant case initially workman did not appear. Sh. R.C. Chabra, Asstt. Chief Officer of the management appeared on 12-12-2000 and then on 24-8-2001 Sh. H.S. Rawat one of the workmen for first time appeared when the case was fixed for further hearing. On 8-11-2001 both the parties were present. Parties did not arrive at any agreement before the Lok Adalat and then the case was fixed on 4-1-2002 when none appeared for the workman and Sh. John Tallibuddin appeared for the bank and filed reply alongwith copy. Again none appeared for the workman on 19-3-2002 and the case was fixed for filing of rejoinder. Then the case was posted on 7-6-02, 3-9-02, 18-11-02, 27-1-03, 16-4-03, 18-6-03, 1-9-03 and 15-12-03 for filing of rejoinder but none appeared and the Ld. PO was on leave. On 19-1-04, the case was again adjourned to 29-3-04 for filing of rejoinder & documents and since then the case has been adjourned on 7 hearings or so on 16-4-2003, 18-6-2003, 1-9-2003 and 15-12-2003, 19-1-2004, 29-3-2004 and on 1-6-2004 notice was sent to both the parties and the case was fixed for today i.e. 24-8-2004. Today also none appeared on behalf of the parties despite notice. It is 4 PM. It appears that both the parties are not interested in prosecuting in this case. Hence under these circumstances I have no option but to pass a

'No Dispute' Award'. Hence a No Dispute award is accordingly made.

S. S. BAL, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2004

का.आ. 2399.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रिविन ऑवरसीज बैंक के प्रबंधन के समक्ष नियोजकों और उनके नियोक्तों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कानपुर के पंचद (संदर्भ संख्या 3/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2004 को प्राप्त हुआ था।

[सं. एल-12012/4/2000-आईआर (बी-II)]

सी. गंगाधरन, अवर सचिव

New Delhi, the 8th September, 2004

S.O. 2399.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2000) of the Central Government Industrial Tribunal cum Labour Court, Kanpur (U.P.) as shown in the Annexure in the Industrial Dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 08-09-2004.

[No. L-12012/4/2000-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE SRI SURESH CHANDRA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SARVODAYA NAGAR, KANPUR, U.P. Industrial Dispute No. 51 of 2000

In the matter of dispute between

Sh. S. P. Tripathi

C/o Sh. B. P. Saxena,

426-W-2, Basant Vihar,

Kanpur

AND

The Senior Regional Manager

Indian Overseas Bank

Regional Office,

3rd Floor Navchetna Kendra

10 Ashok Marg, Lucknow.

AWARD

1. The Central Government Ministry of Labour, New Delhi, vide Order No. L-12012/4/2000-IR(B-II) dated 7-8-2000, has referred the following dispute for adjudication to this Tribunal:—

"Whether the action of the management of Indian Overseas Bank to dismiss the service, of

Sri S.P. Tripathi as punishment is justified ? If not, to what relief the workman is entitled ?”

2. It is common ground that the bank got investigated the matter through its two officer by the name Sri K. K. Kohli and Vipin Tyagi who in turn submitted their report dt. 2-12-92 to the Zonal Manager of the Bank at New Delhi. On the basis of report submitted on 2-12-92, the concerned workman Sri S. P. Tripathi was issued a chargesheet dated 23-2-93 which was replied by the workman. The bank not satisfied with the reply submitted by the workman preferred to investigate/enquire the matter and accordingly appointed enquiry officer. After conclusion of the enquiry, the concerned workman was issued notice for propose punishment and he was afforded a personal hearing in the matter by the disciplinary authority which was availed of by the workman and thereafter the disciplinary authority passed its final order dated 18-12-95 dismissing the workman Sri S. P. Tripathi from bank's services. Workman preferred an appeal against the said order of punishment dated 18-12-95 which could not find favour before the appellate authority and accordingly the appeal of the workman was rejected vide order dated 12-2-99. It is also not in dispute that the workman challenged the action of the management by way of filing writ petition No. 19776 of 98 before the Hon'ble High Court which was dismissed by the Hon'ble court vide order dt. 27-8-98. The workman, being aggrieved by the said order of the Hon'ble Court, preferred an special appeal before the Hon'ble High Court being numbered as 445/98, which was disposed off by the Hon'ble High Court vide its order dated 25-9-98 where by the appellate authority of the bank was directed to take up the appeal of the workman and to dispose of the same on merits. Accordingly the workman was issued letter dt. 12-10-98 by the appellate authority giving him another opportunity of personal hearing and that the appellate authority ultimately dismissed the appeal of the workman vide order dated 18-12-98. In the above back ground the present dispute has been raised by the workman.

3. The workman has failed his statement of claim with the allegations that the chargesheet dated 23-2-93 has been issued to him by an incompetent authority hence the same is illegal; that the workman has not been provided with a copy of the investigation report 2-12-92 alongwith chargesheet which has deprived him to reply the charges effectively; that the documents called for by the workman have not been supplied to him by the enquiry officer during the course of conduct of domestic enquiry; that in the absence of his defence representative bank recorded the evidence of bank's witness; that no opportunity to cross the witness was afforded to the workman who ultimately died; that the principles of natural justice have been flouted badly in the conduct of enquiry by the bank; that the bank could not be in position to consider the evidence of such person who has not been brought for his cross-examination

in the witness box; that the bank conducted the enquiry in an hasty manner; that the disciplinary authority as well as appellate authority without application of mind has passed respective orders of punishment; that on the basis of evidence available on record of enquiry the workman could not have been punished; that the nature S.S. punishment is quite excessive looking to the gravity of the alleged misconduct; that the enquiry report is perverse and could not have been made the basis of awarding punishment to the workman; that the workman has not been given proper opportunity for his defence in the course of enquiry; that the entire action in the name of disciplinary proceedings against the workman is highly arbitrary, illegal and is without jurisdiction; that the bank has victimised the workman by awarding severe punishment which is an act of unfair labour practice and that the punishment as above is not sustainable in the eye of law and is therefore liable to be set aside. On the basis of above allegations the workman has made a request to reinstate him in the service of the bank with full back wages, continuity of service alongwith all consequential benefits.

4. The management contested the claim of the workman and filed written statement wherein it has been alleged by the management that the workman was given all reasonable opportunity of his defence. It has been alleged that taking seriousness of the investigation report dt. 2-12-92 the workman was issued chargesheet. The disciplinary authority after satisfying that the workman has been given full fair and proper opportunity of hearing in departmental enquiry issued him show cause notice for proposed punishment and after affording the workman personal hearing in the matter passed final order of punishment. The workman's appeal too has been disposed in a fair and proper manner by the appellate authority after providing workman personal hearing in the matter. Management has further alleged that the concerned workman committed fraud in the loan account of Sri Guddu and Smt. Shyama Gaur which has nothing to do with the misconduct committed by Sri S. P. Mishra whose services have already been determined by the bank after following disciplinary action. It has also been alleged by the management that looking to the gravity of misconduct/misappropriation of banks fund, the bank has completely lost confidence in the workman and that retention of such workers like the workman in the bank specially who was holding post of trust was not found fit by the bank and accordingly he was dismissed from bank's service. The bank has further alleged that the dismissal of Sri S. P. Tripathi concerned workman was for misappropriation of borrowers money and that cannot take shape of industrial dispute under the provisions of Industrial Disputes Act, 1947. In the end it has been alleged by the bank that its action in dismissing the services of the workman was fully legal and justified and was within the frame work of disciplinary rules and does not call for any interference at

the hands of this tribunal and the claim of the workman is liable to be dismissed with costs.

5. Both the contesting parties adduced evidence in support of their respective stand. On behalf of workman Sri Satya Prakash Tripathi examined himself and pressed the other documentary evidence. On behalf of the management, however, Dy. Chief Officer of the bank was examined. The management witness stated in his examination in chief that preliminary disciplinary inquiry was conducted by him in the month of November 1992, the management has also filed the original departmental disciplinary proceedings. He further stated that after conducting preliminary inquiry against the concerned workman Sri Satya Prakash Tripathi on the basis of the complaint received in the bank, he prepared the report and forwarded it to the Zonal Manager of the bank for further action. Final inquiry was conducted by Sri K. K. Sadashivam which this witness proved as Ext. M-2. This witness has further stated that during the preliminary enquiry he found that the delinquent workman Sri Tripathi received Rs. 500/- from the depositor Smt. Shyama Gaur but deposited only Rs. 200/- with the bank. Similarly Rs. 310/- were received by Sri Tripathi from loanee Sri Guddu but out of the said amount only Rs. 155 were deposited with the bank by the workman in loan account of Sri Guddu.

6. In his cross-examination this witness has stated that he does not know whether the appointment of workman Tripathi was done by Assistant General Manager-V. He further admits that the complaint of Smt. Shyama Gaur is not before him. This witness further admits that the preliminary report prepared by him is also not on record. In his further cross-examination this witness admitted that during the preliminary inquiry he made an inquiry with Smt. Shyama Gaur but did not record her statement and that the statement of other complainant account holder Guddu was not recorded as he could not be made available. He further states that he had not recorded statement of any other witness in this regard nor he thought it necessary. He further admits that he has not even recorded the statement of workman Sri Tripathi nor he thought it necessary to do so. This witness however denied that the preliminary inquiry was conducted by him in a prejudicial manner on account of the workman's transfer and representation made against the transfer order by the delinquent workman.

7. The workman denied allegations as contained in the inquiry report. The workman admitted that he used to issue receipts in duplicate against the payments received from the loanees, the original receipt was to be given to the loanee and the carbon copy alongwith the amount so received was given to the cashier of the bank and it was his business to deposit the same. This witness stated in his examination-in-chief that there was no practice prevalent with the bank to have a receipt from the cashier for the amount received and given to him by the concerned

workman. He further stated that he was appointed in the year 1978, by the AGM of the Meerut branch an officer of scale V, whereas the charges were framed by an officer of scale III and the dismissal order was also passed by the officer of scale III who is junior to the appointing authority in the rank. In his cross-examination the witness has reiterated the claim that he has given all the amount received from the loanees alongwith carbon copy of receipts issued by him for crediting the same in the respective accounts of the loanees.

8. Heard the parties and also perused the report of inquiry and the evidence of the parties carefully.

9. The learned predecessor vide order dated 23-11-01 framed the preliminary issue in the case to the effect whether the domestic enquiry conducted by the management was not fair and proper?

10. The contesting parties relied on respective documentary evidence filed before the tribunal on the preliminary issue. None of the contesting parties, however, chose to adduce any ocular evidence on the issue.

11. The learned predecessor vide order dated 27-3-02 decided the preliminary issue and held that the enquiry proceedings as well as finding recorded by the enquiry officer stand vitiated being made in violation of the principles of natural justice and also being based on inadmissible evidence and the domestic enquiry held against the workman concerned was held to be neither fair nor proper. The preliminary issue was decided against the management and in favour of the workman by the learned predecessor vide order above. The management was thereafter called to adduce evidence in support of their stand against the workman. Parties thereafter lead evidence as mentioned earlier. It is thus clear that the enquiry proceedings against the delinquent official were held unfair and improper.

12. Now it has to be considered that on the evidence adduced by the management after the decision of the preliminary inquiry, the management has been able to prove its case against the workman as to attract the imposition of penalty of dismissal against the workman.

13. In this regard the sole testimony of officer who allegedly conducted the preliminary inquiry against the workman is to be considered in the light of the statement made by the management witness. It is also worth while to mention that this witness has clearly admitted in his statement that one of the two witnesses was not found by him during preliminary inquiry and this witness conformed the other witness but did not record his statement of the complainant. Therefore it cannot be accepted that this witness too by his statement before the tribunal has been able to prove the charges levelled against the workman. This witness too has not been in position to state as to why he did not consider proper recording of the statement of other complainant and also the officers of the bank while

conducting the preliminary investigation. The preliminary inquiry report admitted by the witness therefore, clearly suffers from infirmities. The admission of the witness that he did not consider recording statement of the witness and the officers of the bank as necessary goes to show that the action of the witness who admitted the preliminary inquiry is nothing but an arbitrary action. Again the finding of learned predecessor is to be reiterated that the inquiry was conducted by this witness as unfair and unjust on the ground of being in violation of the principles of natural justice. No other evidence to support the charges against the workman has been adduced by the management and in view of the above the tribunal is left with no other alternative but direct the reinstatement of the workman in the service of the bank.

14. The workman has prayed his reinstatement on the post occupied by him on the date of his dismissal with back wages and other benefits. In this connection it is the admitted case of the workman that after dismissal order passed against the workman, the workman filed appeal against the same which too was disposed off and rejected vide order dated 14-5-98 by the competent authority of the bank. The workman however, preferred a writ petition No. 19776 of 98 challenging the dismissal order before the Hon'ble High Court which too was dismissed by the Hon'ble Court vide order dated 27-8-98. The workman preferred a special appeal No. 445/98 before the same Hon'ble High Court which passed a direction to the appellate authority to take up the appeal and dispose of the same on merits. On the basis of this direction issued by Hon'ble High Court dated 25-9-98 the workman submitted a letter dated 12-10-98 to the appellate authority for further personal hearing which was allowed by the appellate authority vide letter dt. 18-12-98 and the workman submitted written statement before the appellate authority. The appeal however could not found favour to the workman and the same was dismissed vide order dated 12-2-99. The workman thereafter approached the labour authorities for a reference under the provisions of Industrial Disputes Act and the reference was made to this tribunal for adjudication vide order dated 7-6-2000.

15. It is therefore clear that the matter was lingered on the misdirection of the workman himself in approaching the Hon'ble High Court before the reference made by the appropriate government as required under the provisions of Industrial Disputes Act, 1947. Therefore, in the present case it would not be in the fitness of the things to order payment of back wages to the workman from the date of his dismissal. The workman would however be allowed to get back wages and other benefits from the date of reference made by the appropriate government i.e. 7-6-2000. The intervening period shall be considered as period as no pay for no work. It is made clear that the continuity of service will have no effect on the service of the workman on account of no work no pay.

16. Reference is accordingly answered in favour of the workman and against the management.

SURESH CHANDRA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2004

का.आ. 2400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आन्ध्रा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 9/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2004 को प्राप्त हुआ था।

[सं. एल-12025/1/2004-आईआर(बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 8th September, 2004

S.O. 2400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 9/2004 of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the Employer in relations to the management of Andhra Bank and their workmen, which was received by the Central Government on 8-9-2004.

[No. L-12025/1/2004-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :—Shri E. Ismail, B.Sc., LL.B.,
Presiding Officer

Dated the 29th day of July, 2004

INDUSTRIAL DISPUTE L.C.ID. No. 9/2004

Between :

Sri T. Srinivasa Sarma,
S/o Late TVSRK Kutumba Rao,
R/o 26-29-13, 2nd Line,
A.T. Agrapharam,
Guntur.

.....Petitioner

AND

1. The Chief Manager & Disciplinary Authority,
Andhra Bank, Zonal Office,
Vijayawada.
2. The Assistant General Manager
(Disciplinary Matters),
Personnel Department, Head Office,
Andhra Bank, Saifabad,
Hyderabad.

APPEARANCES:

For the Petitioner	M/s. C. Vijaya Shekar Reddy & S. Vijay Venkatesh, Advocates
For the Respondent	M/s. S. Udayachala Rao, S. Vikramaditya Babu & S. Mujib Kumar, Advocates

AWARD

1. This is a case taken under Sec. 2 A (2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The brief facts of the petition are : That the Petitioner was appointed as clerk in the Respondent bank on 21-5-1981. That a chargesheet was issued to him on 9-10-98 stating that while he was working as a clerk in the Vidyadharapuram branch of the Respondent bank, he had temporarily misappropriated cash received and not accounting the amount so received on the same day. The Petitioner submitted a detailed explanation. That an enquiry was conducted and he was awarded punishment of compulsory retirement vide order dated 23-9-2000. Various other things are mentioned about the enquiry which need not be repeated here for the simple reason that the domestic enquiry was conceded to have been validly conducted on 16-6-2004. It is further submitted that the punishment of compulsory retirement is arbitrary, illegal and may be set aside and direct the Respondent to reinstate him with full back wages, consequential benefits.

3. In the counter it is submitted that the Petitioner while working at Vidyadharapuram branch used to issue cheques to various persons in repayment of debts. On 35 occasions the cheques issued by the Petitioner were returned dishonoured for want of funds in his account. In respect of four such instances, the Petitioner's explanation was called for. The Petitioner has taken a credit card with the Respondent bank with a credit limit of Rs. 15000. However, the Petitioner misutilised the card issued and failed to clear the bills. As on 31-10-98, the over dues in his credit card account stood at Rs. 54,179.23 ps. as against the permitted limit of Rs. 15000. On receipt of his explanation again a lenient view was taken.

4. That while working as cashier the Petitioner is alleged to have temporarily misappropriated cash received from three valuable customers of the branch on various occasions by accepting the cash and giving them counter foils affixing the 'cash received' stamp and by not accounting for the amount so received immediately and making good the same to the accounts of the customers subsequently by altering the dates on the original cash-credit challans and by abusing and misusing his position as cashier, for meeting his financial requirements.

5. That the Petitioner was served with a charge sheet No. 689/20-C-281/151 dated 9-10-98 enumerating the acts of misconduct alleged to have been committed by him. The specific allegations made against the Petitioner in the charge sheet dated 9-10-98 are as follows :

(i) On 1-12-97 M/s. Karimulla Shah Enterprises remitted an amount of Rs. 40,000/- for being credited into their C.D. A/c No. 118 for which he has affixed 'Cash Received' stamp on the counter foil duly signing the same and handed over the counter foil to the party. But the amount was neither credited to the account of the party nor was it accounted for in the books of the bank. Instead, the amount was credited to the account of the party on 2-12-97 with the challans dated 1-12-97 bearing 'Cash-Received' stamp of 2-12-97. On the same day, i.e., 2-12-97 M/s. Surya Enterprises have handed over cash of Rs. 40,000 for being credited into their OCC A/c No. 5 which was actually credited into the account on 3-12-97 itself affixing 'Cash-Received' stamp duly signed by him.

(ii) On 4-12-97 M/s. Konakalla Steels handed over cash of Rs. 15,000/- to him for being credited into their OCC A/c No. 4 which was not accounted for on the same day, in spite of giving them the counter foil affixing 'Cash Received' stamp with his initial. The amount was accounted for on 5-12-97 altering the challans dated 4-12-97 to 5-12-97 with 'Cash-Received' stamp dated 5-12-97.

(iii) M/s. Konakalla Steels have remitted cash of Rs. 47,500/- on 6-12-97 for being credited into their OCC A/c No. 4 which was not accounted for on the same day inspite of issuing the counter foil affixing 'Cash-Received' stamp dated 6-12-97, duly initialed by him. The amount was accounted for in their account on 8-12-97 altering the original credit challans dated 6-12-97 to 8-12-97 and affixing 'Cash-Received' stamp dated 8-12-97.

(iv) M/s. Surya Steels remitted an amount of Rs. 36,000/- on 8-12-97 for being credited into their OCC A/c No. 5 which was not accounted for in their account on the same day, even though he has given them the counter foil with 'Cash-Received' stamp of 8-12-97, duly subscribing his initial. The amount was accounted for in their account on 9-12-97 with the original credit challans dated 8-12-97 affixing 'Cash-Received' stamp of 9-12-97.

(v) On 10-12-97 M/s. Konakalla Steels remitted an amount of Rs. 18,000/- to be credited into their OCC A/c No. 4 which was received by him for which he has given a credit counter foil affixing 'Cash-Received' stamp of 10-12-97, subscribing his initial. But the amount was not credit to their account on 10-12-97 This was made good only on 12-12-97. On the same day, i.e., 10-12-97, M/s. Surya Steels remitted a sum of Rs. 23,000/- to be credited into their OCC A/c No. 5 which was not accounted for on the same day, even though the counter foil of 10-12-97 duly affixing 'Cash-Received' stamp of that date and subscribing has initial was given to the party. The amount was

accounted for into their account only on 12-12-97 with the original cash credit challans altering the date from 10-12-97 to 12-12-97 with that date's 'Cash-Received' stamp.

(vi) On 12-12-97, M/s. Surya Steels have handed over a cash of Rs. 13,000 to the Petitioner to be credited into their OCC A/c No. 5. The Petitioner gave them the counterfoil bearing that date's 'Cash-Received' stamp with his initial. However, the amount was not accounted for on the same day. It was accounted for on 13-12-97 with the original credit challans altering the date from 12-12-97 to 13-12-97.

(vii) On 13-12-97 M/s. Konakalla Steels have handed over cash of Rs. 1,11,000 to be credited to their OCC A/c No. 4 which the Petitioner has given the counter foil, subscribing his initial and affixing that date's 'Cash-Received' stamp. But the amount was not accounted for either in the books of the bank or in their account on the same day. Instead, the amount was made good into their account on 15-12-97 using the original credit challans of 13-12-97 altering the date from 13-12-97 to 15-12-97.

(viii) On 15-12-97, M/s. Karimulla Shah Enterprises have handed over cash of Rs. 70,000 to the Petitioner for being credited into their C&D A/c No. 118 for which the Petitioner has given them the counterfoil with that date's 'Cash-Received' stamp subscribing his initial. The amount was accounted for in their account only on 17-12-97 using the original credit challans altering the date from 15-12-97 to 17-12-97.

(ix) On 16-12-97, M/s. Konakalla Steels have handed over cash of Rs. 40,000 to be credited into their OCC A/c No. 4. Though the Petitioner has given them counter foil with that date's 'Cash-Received' stamp subscribing his initial, the amount was actually accounted for their account only on 18-12-97 using the original cash credit challans altering the date from 16-12-97 to 18-12-97.

(x) On 18-12-97, M/s. Karimulla Shah Enterprises have handed over cash of Rs. 40,000 to be credited into their C & D A/c No. 118. Though the Petitioner has given them counterfoil with that date's 'Cash-Received' stamp subscribing his initial, the amount was actually accounted for their account only on 28-12-97 using the original cash credit challans altering the date from 18-12-97 to 28-12-97.

(xi) On 24-12-97, M/s. Konakalla Steels have handed over cash of Rs. 10,000 to be credited into their OCC A/c No. 4. Though the Petitioner has given them counter foil with that date's 'Cash-Received' stamp subscribing his initial, the amount was actually accounted for their account only on 26-12-97 using the original cash credit challans altering the date from 24-12-97 to 26-12-97. The same party, i.e., M/s. Konakalla Steels have also handed over cash of Rs. 50,000 to the Petitioner on 15-1-98 for being credited into their OCC A/c No. 4. Though the Petitioner has given them the counter foil affixing that date's 'Cash-Received'

stamp subscribing his initial, the amount was not accounted for either in the books of the bank or in the party's account on 15-1-98. Instead the amount was accounted for on 17-1-98 using the original cash credit challans however with the initial of Mr. A.S. Prasad the Officiating cashier, as the Petitioner relinquished the charge as cashier on 16-1-98.

6. Much is written about enquiry which need not be gone into as it is conceded, at this stage. It is argued by the Learned Counsel for the Petitioner that after all there is no loss to the bank and here almost in all the 10 incidents cited, the amounts were paid on the next day or the day after. Hence, a lenient view may be taken and he may be reinstated into service.

7. The Learned Counsel for the Respondent argued that a person whose cheques bounced for 35 times and who has as many as on 11 occasions credit card also surpassed the limit and if a lenient view is taken, such a person would be dangerous to be kept in bank's service. Hence, he submits that the Petitioner is not entitled for any relief.

8. I have given serious thoughts whether any mercy can be shown to this Petitioner. But, I am afraid the answer came only negative because I can understand the dishonour of the cheques on two or three occasions, but his cheques were dishonoured for 35 times. His credit card limit was Rs. 15,000, but it went upto Rs. 54,179. The charge is that on 11 occasions he credited the cash on the next day or day after. So it is very clear that the Petitioner is trying to live beyond his means and such persons are always dangerous who tried to live beyond their means and person who on 11 occasions credited the amount on the next day or day after next day may if occasion arises and if he is reinstated into the bank may take away the cash itself next time. So I cannot expose the bank to such a great risk. Hence, I hold that the Petitioner is not entitled for any relief and the order of compulsory retirement is confirmed.

Award passed accordingly. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 29th day of July, 2004.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined
for the Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 सितम्बर, 2004

का. आ. 2401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण कोलम के पंचाट (संदर्भ संख्या 44/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-9-2004 को प्राप्त हुआ था।

[सं० एल-12012/86/99-आईआर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st September, 2004

S.O. 2401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 44/99) of the Industrial Tribunal-Kollam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 1-9-2004.

[No. L-12012/86/99-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL,
KOLLAM

(Dated, this the 2nd day of August, 2004)

PRESENT

SHRI C. N. SASIDHARAN
INDUSTRIAL TRIBUNAL

IN

Industrial Dispute No. 44/99

BETWEEN

The Deputy General Manager,
Syndicate Bank, Zonal Office,
Sastha Kripa Office Complex,
Sasthamangalam, Trivandrum,

Management

(By Sri. R. S. Kalkura,
Advocate, Kochi)

AND

(1)

Smt. B. Sunitha, Karimkutty,
Harijan Colony, Uriyakode
Vellnad, Trivandrum.(By Sri. Anil Narayan,
Advocate, Trivandrum)

(2)

Smt. P. Suseela, Jaya Vilasam,
Vellnad, Trivandrum.
(impleaded worker)

Workmen

(By Sri. R. Lekshmana Iyer,
Advocate, Trivandrum)

AWARD

The Government of India by Order No. L-12012/86/99-IR (B-II) dated 25-8-1999, have referred this industrial dispute for adjudication to this Tribunal.

The issue for adjudication is the following:

"Whether the action of the management of Syndicate Bank in denying seniority to Smt. B. Sunitha, Part-time sweeper over Smt. P. Suseela and consequently not appointing her in the post of part-time sweeper in vellnad branch is justified? If not, to what relief the worker is entitled to?"

2. The contentions of Smt. B. Sunitha, the workman in this case, are briefly as under: The workman was working as part-time sweeper in the Vellnad branch of the management bank from 13-6-1989 leave vacancies upto 10-10-1989. She had also worked as temporary from 1-6-1995 and one Smt. Suseela was engaged attender till 1995 subsequently. However she was not engaged/as part-time sweeper. The workman was denied employment only to accomodate Smt. Suseela, who was the daughter of a permanent employee in the bank. The workman was again engaged as a part-time sweeper during 1989 and was retired on 10-7-1999. The engagement of Smt. Suseela was done over looking the seniority of the workman. The workman belongs to scheduled caste community and hence eligible for consideration as part-time sweeper. According to her the denial of employment is illegal and hence she is entitled to continue as part-time sweeper in the bank.

3. The contentions of the impleaded worker Smt. P. Suseela are briefly as under: The issues involved in this reference do not constitute an individual dispute and no union has sponsored such a dispute. Further the subject matter of the dispute is not covered by Sec. 2-A of the Industrial Disputes Act, 1947 ('the Act' for short). Hence the reference for adjudication itself is bad in law. This worker is now working as part-time sweeper in the Vellnad branch of the bank continuously from 1-11-1998 onwards. She is now drawing Rs. 2038. 50PM including basic pay, DA and HRA. This worker's mother Smt. Ponnamma was working as a part-time sweeper in the said branch from the very beginning till 31-10-88. During that period this worker was being engaged as temporary part-time sweeper whenever her mother was unable to attend such duty. As per the Bank's Rules and Regulations then existing, a Part-time sweeper could make available any substitute of her choice if she was unable to attend duty. On such basis, this worker was engaged from the year 1988 onwards. This worker had worked as temporary part-time sweeper for a total period of 504 days from 1989 to 1998. The claimant workman had worked only 54 days from 13-6-1989 to 10-10-1989 and for

72 days during 1994-95 with long interruptions. This worker is senior to the claimant and this worker was ranked as No. 1 in the panel maintained by the Velland branch. After the retirement of Smt. Ponnamma on 31-10-1998, this worker was regularly appointed wef. 1-11-1998. The decision of management is just and proper.

4. The contentions of management are briefly as under : This dispute as framed is not maintainable. Smt. P. Suseela is a necessary party to the proceedings and due to the non-joinder of such necessary party, the claim statement is bad. The Velland branch of the bank had appointed Smt. Ponnamma as part-time sweeper wef. 1-5-1976. One of the conditions for appointment was that she had to provide a badli whenever she proceeds on leave. That condition was in force till 1-12-1995. The workman Smt. Sunitha worked as temporary badli sweeper on three occasions for 54 days from 13-6-1989 to 10-1-1989. Subsequently worked as temporary attendar for 72 days during 1994-95. As per the records of the branch, Smt. Suseela had performed duties of temporary part-time sweeper for a total period of 504 days on various occasions from 1989 to 1998. She was working as temporary/badli part-time sweeper earlier to 1989. She was senior to the workman. In the panel maintained by the Velland branch Smt. Suseela was rank No. 1 and the workman was rank No. 2. When Smt. Ponnamma was relieved from service on 31-10-1998 the bank appointed Smt. Suseela as per the seniority in the rank list, which is in order. The workman can get appointment only when next vacancy arose in that branch as there is only one post of part-time sweeper. The management have not taken any biased decision in the matter and there is no denial of employment. The management had acted in accordance with the provisions and practice laid down in the bank. The management denies all allegations made against it by the workman.

5. The workman has given evidence as WW1 and Exts. W1 to W3 have been marked on her side. The impleaded worker has given evidence as WW2 and one more witness was examined on her side as WW3. The Chennai Zonal Office Manager of the management bank has given evidence as MW1 and Exts. M1 to M11 have been marked on the side of the management.

6. The workman is attacking the denial of her seniority and consequent non employment as part-time sweeper by the management and appointing Smt. Suseela, who is subsequently impleaded in this dispute as addition a workman, in that post wef. 1-11-1998. According to the management Smt. Suseela is senior as per the list prepared by the management and hence she was appointed in the vacancy arose on the retirement of Smt. Ponnamma, who is the mother of the said Suseela and was the regular part-time sweeper. Now the prime question to be considered is who is senior to be considered for the post of regular part-time sweeper wef. 1-11-1998. Admittedly the workman Smt. Sunitha was employed as part-time sweeper with Velland

branch of the management bank from 13-6-1989 to 10-10-1989 and she had worked for 54 days during this period. Such part-time work was given as and when regular part-time sweeper went on leave according to the management. The only evidence showing employment of the workman as well Smt. Suseela prior to 1-11-1998 is the pass books produced by both of them. Ext. W2 is the pass book of the workman and as per that the workman's first salary of Rs. 345 is seen credited on August 1989. The then branch Manager of the bank while giving evidence before this Tribunal as MW1 has admitted that the workman worked in that branch from 13-6-1989 as per the Attendance Register. At the same time the pass book of Smt. Suseela, Ext. W1-b, shows that her first salary payment is credited only during January 1991. There is no other documentary evidence on record to show that Smt. Suseela was paid salary from the management bank prior to January 1991. The entries in the aforesaid pass books make abundantly clear that the workman Smt. Sunitha had worked in the management bank from August 1989 and she is senior to Smt. Suseela.

7. According to the management and as deposed by Smt. Suseela as WW2, her mother as WW3 and the management's witness as MW1, Smt. Suseela had performed duties of temporary part-time sweeper for a total number of 504 days on various occasions during 1989-98. It is also her case that she was working even earlier to the workman's first engagement and even prior to 1989. But except the interested testimonies of these three witnesses there is no supporting documentary evidence either from the management side or from the side of Smt. Suseela. It is very much pertinent to note that MW1 has admitted that the name of the workman is included in the attendance register while the name of Smt. Suseela, who was stated to be sponsored by her mother, is not included in the attendance register. The explanation of MW1 is that name of Smt. Suseela is not included in the attendance register because that is the law of the bank. It may be noticed that the workman has categorically deposed that part-time sweeper is paid salary through pass book and the details of part-time sweeper are recorded in the ledger, credit slip and attendance book. That part of the statement remains unchallenged also. But the management has not produced any such documents without any explanation what so ever. Further the management has no case that the management is not in possession of any such records. Smt. Suseela has deposed that she was paid salary through voucher from 1988 till she was appointed as regular part-time sweeper in the year 1998. But the management has not produced any such voucher to prove that Smt. Suseela was employed as part-time sweeper prior to January 1991, when she was paid her first salary as per her bank pass book Ext. W1-b. It is also noticeable that WW3, the mother of Smt. Suseela, has deposed that WW3 retired from service in the year 1998 and her daughter started working six years prior to the retirement of WW3. This statement of WW3 also negatives

the claim of management as well as Smt. Suseela that she was working in the bank from the year 1988 and prior to the employment of the workman in the year 1989. The above circumstances fully establish that the workman is senior to Smt. Suseela in the service of management bank.

8. The case of management is that it has appointed Smt. Suseela as regular part-time sweeper from 1-11-1998 as she was senior in the panel of badli part-time sweeper. According to the management such seniority was given to Smt. Suseela as she had worked in the bank from the year 1988 as sponsored by her mother who was the regular part-time sweeper during the time. But there is no evidence of such alleged sponsoring and that Smt. Suseela had worked in the bank prior to the engagement of the workman from 13-6-1989. Further such a claim of the management bank is found against by me as stated above. Ext. M7 produced by the management contains details of regular vacancies of part-time sweepers in branch/office as on 31-3-1996. In col. No. 5-e of Ext. M7 the date of first appointment in the branch is recorded. As per that, the workman was first appointed on 13-6-1989 and Smt. Suseela was first appointed only on 17-12-1990. Ext. M3 is circular issued by the management on 27-12-1989 regarding preparation of a panel of badli part-time sweepers. In para. 2 of Ext. M3 it is specifically stated that the list of badlis shall be prepared seniority-wise with reference to the date of first appointment as badli and temporary appointment should be in that order except where senior is not available. The appointment of Smt. Suseela as temporary part-time sweeper ignoring the seniority of the workman is clearly against the said provision in Ext. M3 circular. Further MW1 has admitted that as per the guidelines of the bank preference should be given to the senior part-time badli sweeper. But it is clear that the management has not followed the said guidelines while posting Smt. Suseela over the seniority of the workman. It is also noticeable that the workman admittedly belongs to SC/ST community and the management has ignored her preference in the matter of appointments. Considering the above aspects also the action of management is improper and the workman is entitled to get appointment as regular part-time sweeper wef. 1998 over the claim of Smt. Suseela who is junior to the workman. The present appointment of Smt. Suseela on the basis of such a panel is patently irregular and quite unjustified.

9. The management further contends that the appointment Smt. Suseela is in accordance with the settlement with the union of employees in the light of Ext. M4 Minutes of the meeting with the management and its union held on 14-12-1990. Even if there was such an understanding between the management and union it has no legal validity in the light of my above finding that the workman is legally entitled to be appointed as regular part-time sweeper in the permanent vacancy considering her seniority from 13-6-1989. So the contention of the management on the basis of Ext. M4 Minutes is devoid of merit. The

management has yet another contention that Smt. Suseela had worked as part-time sweeper from the year 1988 as sponsored by her mother Smt. Ponnamma who was the regular sweeper and that was the practice existed till 27-12-1989, the date of Ext. M3 circular. But as held by me above there is no evidence to show that Smt. Suseela had worked in that branch of the bank and was paid salary prior to the initial engagement of the workman. It is also pointed out that Smt. Suseela had worked 504 days as part-time sweeper while the workman worked only 54 days and hence Smt. Suseela is more eligible than the workman for appointment. But the management has no case that experience is any added qualification for appointment as part-time sweeper. At this juncture it is pertinent to note the definite case of the workman that she was denied engagement even as badli part-time sweeper in order to provide Smt. Suseela who is the daughter of the regular sweeper. Therefore the above contentions are also only to be rejected.

10. For the foregoing discussions, I hold that the action of the management of Syndicate Bank in denying seniority to the workman Smt. B. Sunitha over Smt. P. Suseela and consequently not appointing her in the post of part-time sweeper in Velland branch, is irregular and unjustified. The management is accordingly directed to reinstate the workman in the post of part-time sweeper in the said branch wef. 1-11-1998 with all consequential benefits including continuity of service.

An award is passed in the above terms.

C. N. SASIDHARAN, Industrial Tribunal

APPENDIX

Witnesses examined on the side of the Workman

- | | |
|------|-------------------|
| WW1. | Smt. B. Sunitha |
| WW2. | Smt. P. Suseela |
| WW3. | Smt. C. Ponnamma. |

Documents marked on the side of the Workman

- | | |
|----------|---|
| Ext. W1. | Certificate issued to the workman Smt. Sunitha from the management bank dated 6-11-1992 |
| Ext. W2. | Pass book of the workman issued from the Velland branch of the management bank |
| Ext. W3. | Letter issued to the workman Smt. Sunitha from the Deputy General Manager of the management, Trivandrum dated 25-10-1997. |

Documents marked on the side of the Workman Smt. Suseela impleaded worker

- | | |
|-------------------|---|
| Ext. W1-a. | Photocopy of circular issued by the management bank dated 3-11-1990 |
| Ext. W1-b series. | 17 pages of the pass book in the name of Smt. P. Suseela |
| Ext. W1-c. | Photocopy of application for condition of pension submitted to the management bank by Smt. S. Ponnamma dated 29-10-1998 |

Ext. W1-d. Photocopy of order issued of Smt. C. Ponnamma from the Vellabad branch of the management bank dated 31-10-1998.

Documents marked on the side of the Management

- Ext. M1. Photocopy of appointment order issued to Smt. Ponnamma from the Vellanad branch of the management bank dated 27-8-1976
- Ext. M2. Photocopy of memorandum issued to Smt. C. Ponnamma from the Vellanad branch of the bank dated 21-10-1982
- Ext. M3. Photocopy of the circular issued by the management dated 27-12-1989
- Ext. M4. Photocopy of the minutes of mini joint meeting held between the representatives of the management and representatives of the employees union held on 14-12-1990
- Ext. M5. Photocopy of appointment order issued Smt. Suseela from the Vellanad branch of the management dated 8-11-92
- Ext. M6. Photocopy of monthly report on the appointment of bedlys dated 30-11-1992
- Ext. M7. Photocopy of panel list of part-time sweepers as on 31-3-1996
- Ext. M8. Photocopy of letter addressed to Smt. Sunitha from the Deputy Divisional Manager of the management bank. Trivandrum dated 7-11-1997
- Ext. M9. Photocopy of letter addressed to Smt. C. Ponnamma from the Vellanad branch of the bank dated 14-1-1980.
- Ext. M10. Photocopy of letter addressed to Smt. C. Ponnamma from the Vellanad branch of the bank dated 8-8-1983.

आदेश

नई दिल्ली, 6 सितम्बर, 2004

का. आ. 2402.—जबकि, केन्द्रीय सरकार का विचार है कि बजाज इलेक्ट्रिकल्स लि. के प्रबंधक के संबंध में नियुक्तों और उनके कर्मचारों के बीच औद्योगिक विवाद विद्यमान हैं जो इसके साथ हैं;

और जबकि, अहमदाबाद स्थित गुजरात के उच्च न्यायालय ने विविध नागरिक आवेदन संख्या 1711/2003 में विविध नागरिक आवेदन संख्या 1943/2003 में औद्योगिक विवाद अधिनियम, 1947 के उपबंधों के अन्तर्गत इस मामले पर विचार करने और समुचित निर्णय लेने का निदेश दिया है;

और जबकि, एक से अधिक राज्यों में स्थित बजाज इलेक्ट्रिकल्स लि. के प्रतिष्ठान इस मामले में इच्छुक हैं; अथवा प्रभावित हैं;

और जबकि, केन्द्रीय सरकार का विचार है कि कथित विवाद का न्याय-निर्णयन राष्ट्रीय अधिकरण द्वारा किया जाना चाहिए;

इसलिए, अब, केन्द्रीय सरकार औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्वारा एक राष्ट्रीय औद्योगिक अधिकरण का गठन करती है जिसका मुख्यालय मुंबई में होगा तथा केन्द्रीय सरकार औद्योगिक संख्या-1, मुंबई के मौजूदा पीठासीन अधिकारी, श्री एस.सी. पाण्डेय को इसके पीठासीन अधिकारी के रूप में नियुक्त करती है तथा औद्योगिक विवाद अधिनियम की धारा-10 की उपधारा (1-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्वारा उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उक्त राष्ट्रीय अधिकरण को भेजती है। उक्त राष्ट्रीय अधिकरण अपना पंचाट 6 माह के भीतर दे देगा।

अनुसूची

“क्या सीधे भुगतान प्रणाली, काम नहीं भुगतान नहीं प्रणाली तथा प्रबन्धन समिति प्रणाली के अन्तर्गत काम कर रहे कर्मकार देश भर में भारतीय खाद्य निगम के विभिन्न डिपुओं में विभागीय श्रमिकों के समान वेतन तथा अन्य लाभों के पात्र हैं ?

यदि हां, तो वे किन लाभों के पात्र हैं ?”

[सं. एल-42012/144/2004-आईआर (सी-II)]

एन० पी० केशवन, डैस्क अधिकारी

ORDER

New Delhi, the 6th September, 2004

S.O. 2402.—Whereas the Central Govt. is of the opinion that an industrial dispute exists between the employers in relation to the management of Bajaj Electricals Limited and their workman in respect to the schedule hereto annexed;

And whereas the Hon'ble High Court of Gujarat at Ahmedabad in Misc. Civil Application No. 1943/2003 in Misc. Civil Application No. 1711/2003 gave a direction to consider the matter under the provisions of industrial Disputes act, 1947 and take appropriate decision.

And whereas the establishments of Bajaj Electricals Limited situated in more than one State are likely to be interested in or affected;

And whereas the Central Government is of the opinion that the said dispute should be adjudicated by a National tribunal;

Now, therefore, the Central Government in exercise of the powers conferred by Section 7B of the I.D. Act 1947 (14-of 1947), hereby constitutes a National Industrial Tribunal with the Head Quarters at Mumbai and appoint Sh. S.C. Pandey Presently Presiding Officer. CGIT No. 1 Mumbai as its Presiding Officer, and in exercise of the powers conferred by Sub Section (1A) of Section 10 of the Industrial Disputes Act hereby refers the said Industrial Dispute to the said National Tribunal for Adjudication. The said National Tribunal shall give its award within a period of six months.

SCHEDULE

“Whether the action of the management of Bajaj Electricals Limited in discontinuing payment of ex-gratia

from the accounting year 2001-02 at the rate of 20% to the employees who are not covered under Payment of Bonus Act is legal and justified? If not to what relief the workman are entitled?"

[No. L-42012/144/2004-IR(C-II)]

N. P. KESAVAN, Desk Officer

नई दिल्ली, 16 सितम्बर, 2004

का. अ. 2403.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अक्टूबर, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 (धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध महाराष्ट्र राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

“जिला नागपुर, तालुक साओनार के राजस्व ग्राम-खपरखेडा एवं चिचोली के अंतर्गत आने वाले क्षेत्र।”

[सं० एस-38013/67/2004-एसएस-I]

के.सी. जैन, निदेशक

New Delhi, the 16th September, 2004

S.O. 2403.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said act shall come into force in the following areas in the State of Maharashtra namely :—

“Areas comprising the Revenue Village of Khaperkheda and Chicholi of Saoner Taluka of Nagpur District.

[No. S-38013/67/2004-SS-I]

K. C. JAIN, Director

नई दिल्ली, 16 सितम्बर, 2004

का. आ. 2404.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अक्टूबर, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 (धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध महाराष्ट्र राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

“जिला नागपुर, के हिमना तालुका में राजस्व ग्राम-वनडोंगरी, वाडी, मोंधे एवं निलधोह के अंतर्गत आने वाले क्षेत्र।”

[सं० एस-38013/66/2004-एसएस-I]

के.सी. जैन, निदेशक

New Delhi, the 16th September, 2004

S.O. 2404.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said act shall come into force in the following areas in the State of Maharashtra namely :—

“Areas comprising the Revenue Village of Wandongri Wadi, Mondhe and Nildhoh in Hingna Taluka of Nagpur District.

[No. S-38013/66/2004-SS-I]

K. C. JAIN, Director

नई दिल्ली, 16 सितम्बर, 2004

का. आ. 2405.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अक्टूबर, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 (धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध महाराष्ट्र राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

“जिला नागपुर, के परस्योनी तालुका में राजस्व ग्राम-कान्हन, पिपरी, सतरापुर एवं सिहोरा में आने वाले क्षेत्र।”

[सं० एस-38013/65/2004-एसएस-I]

के.सी. जैन, निदेशक

New Delhi, the 16th September, 2004

S.O. 2405.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said act shall come into force in the following areas in the State of Maharashtra namely :—

“Areas comprising the Revenue Village of Kanhan, Pipri, Satrapur and Sihora in Parseoni Taluka of Nagpur District.

[No. S-38013/65/2004-SS-I]

K. C. JAIN, Director

नई दिल्ली, 16 सितम्बर, 2004

का. आ. 2406.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अक्टूबर, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 (धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध महाराष्ट्र राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

“जिला नागपुर के काम्पटी तालुक के राजस्व ग्राम-यखेडा, खैरी, भीलगाँव एवं रनाला के अंतर्गत आने वाले क्षेत्र।”

[सं० एस-38013/64/2004-एसएस-I]

के.सी. जैन, निदेशक

New Delhi, the 16th September, 2004

S.O. 2406.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said act shall come into force in the following areas in the State of Maharashtra namely :—

“Areas comprising the Revenue Village of Yerkheda, Khairi, Bhilgaon and Ranala in Kamptee Taluka of Nagpur District.

[No. S-38013/64/2004-SS.I]

K. C. JAIN, Director

नई दिल्ली, 14 सितम्बर, 2004

का.आ. 2407.—राष्ट्रपति, श्री सी एम सिंह को दिनांक 8-9-2004 (पूर्वाह्न) से तीन वर्ष की अवधि के लिए केन्द्रीय सरकार

औद्योगिक न्यायाधिकरण-सह-श्रम न्यायालय, जबलपुर के पीठासीन अधिकारी के रूप में नियुक्त करते हैं।

[सं. ए-11016/10/2003-सी.एल.एस.-II]

वाई. पी. सहगल, अवर सचिव

New Delhi, the 14th September, 2004

S.O. 2407.—The President is pleased to appoint Sh. C.M. Singh as Presiding Officer Central Govt. Industrial-Cum-Labour Court, Jabalpur w.e.f. 8-9-2004 (F.N.) for a period of three years.

[No. A-11016/10/2003-CLS-II]

Y. P. SEHGAL, Under Secy.

(उत्प्रवास प्रभाग)

नई दिल्ली, 21 सितम्बर, 2004

का.आ. 2408.—केन्द्रीय सरकार एतद्वारा उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री जी. पार्थसारथी, श्रम और रोजगार मंत्रालय में केन्द्रीय सचिवालय सेवा-संवर्ग के अनुभाग अधिकारी को दिनांक 6 सितम्बर, 2004 (पूर्वाह्न) से उत्प्रवास संरक्षी, चेन्नई के रूप में नियुक्त करते हैं।

[सं. एस-13011/1/2003-उत्प्रवास]

अशोली चलाई, अवर सचिव

(Emigration Division)

New Delhi, the 21st September, 2004

S.O. 2408.—In exercise of the powers conferred by Section 3, Sub-Section (1) of the Emigration Act, 1983 (31 of 1983), the Central Government hereby appoints Shri G. Parthasarathi, Section Officer of the CSS cadre of Ministry of Labour and Employment, as Protector of Emigrants, Chennai with effect from 6th September, 2004 (Forenoon).

[No. S-13011/1/2003 Emig.]

ASHOLI CHALAI, Under Secy.